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ABSTRACT

This paper reviews law-related education and suggests ways to implement this type of education in Alaska's secondary schools. Ten reasons for teaching law-related education are presented including the following: research demonstrates the effectiveness of such education; increases student interest in the law; helps students become effective citizens; deters juvenile delinquency and youth crime; and encourages peaceful conflict resolution. Ten characteristics of effective law-related education programs are then presented. These include: involvement of outside resource persons; use of good teaching methods; small group activities; support by administrators; peer support for teachers; and focus on values clarification and moral development. Since most law-related education materials are based upon federal law and procedure, the creation of Alaska-specific, law-related education materials is encouraged. Ten lesson plans for use in secondary classrooms are presented in the appendix. Lesson plans address such topics as student rights, the Alaska court structure, jury deliberations, misdemeanor sentencing, the right to privacy, the Alaska Oil Spill, and comparative law--the Pacific Rim. Recommendations include the need for teacher/attorney teams state to create additional Alaska-specific lesson plans, and the need to include all law-related education materials into a teacher-accessible computerized data bank. Contains 104 references. (GLR)

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A
LAW-RELATED EDUCATION
FOR
ALASKANS

A

THESIS

Presented to the Faculty of the

UNIVERSITY OF ALASKA, SOUTHEAST

In Partial Fulfillment of the Requirements
for the Degree of

MASTER OF ARTS IN TEACHING

By

Donald L. Surgeon, J.D.

Juneau, Alaska

June 1990

HE 024 916

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Abstract

The literature related to law-related education is reviewed in order to determine its parameters, the reasons it is taught, and the characteristics which make some programs more effective than others. Most law-related education materials are based upon either federal law and procedure, or the law and procedure of other states. The law of Alaska and the legal issues peculiar to this state are not included within the design of these materials. Alaskan constitutional and statutory issues are briefly explored, and it is concluded that the creation of Alaska-specific law-related education materials would be beneficial. Ten lesson plans were created to serve as a beginning to the process of creating curriculum materials for Alaska's unique law-related education program. It is recommended that the lesson plans be field tested, that additional Alaska-specific lesson plans be created by teams of teachers and attorneys throughout the state, and that all law-related education materials be included in a computerized bank which is accessible to all teachers in the state.

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Consider the following legal issues faced by Alaskans today: recriminalization of marijuana, locker searches, abortion, guilt by association, due process hearings for students with handicaps, smoke-free schools, students' rights, and teachers and students in love. Law affects us in many ways, both as members of the society in which we live and as participants in the schools which we attend. Law-related education brings these legal issues into the classroom.

The history of law-related education is relatively brief. In the 1930's, Isidore Starr, the father of law-related education, was teaching high school social studies while at the same time attending law school at night. He was struck with the boring manner in which civics was taught in high school, compared to the excitement and intellectual challenge which he experienced in law school. He therefore incorporated law school content and processes into the high school courses which he taught (Anderson, 1987; Start, 1987). Thirty years later, in 1962, the formal movement supporting law-related education began in earnest (Start, 1987). It had finally been recognized that law was too important to be left only to lawyers (Kaplan, 1987; Study Group on Law-Related Education, 1978). By 1982, the idea of teaching about law in the secondary schools had been carried to every state (Phi Alpha Delta Law Fraternity, 1982). Alaska was no exception.

Implementation of law-related education appears to have been highly successful. In a nationwide curriculum survey, it was found that law-related education is in wider use than any other new social studies project (Hahn, 1985). Overall, it was ranked fourth as a priority in social studies education (behind two related topics, citizenship education and critical thinking and problem solving). Education and community leaders have testified about what law-related education has done for their students and their communities (Anderson, 1987). Assessment of student performance on many law-related items has improved where schools have made a concerted effort in this area (National Assessment of Educational Progress, 1978). Where law-related education has been tried and properly implemented, it appears to be working.

The purpose of this document is to critically evaluate law-related education and to suggest some ways in which law-related education can be properly implemented in Alaska's secondary schools. The road travelled to get to this purpose explores what law-related education is, why it is taught, and the characteristics which appear to make law-related education programs effective. At this point in the road, the "generic" discussion of law-related education moves to one which focuses exclusively on law-related education in Alaska. Alaska law is shown to differ in important ways from both federal law and the laws of other states. Further, Alaska's uniqueness causes its citizens to confront some legal issues which are peculiar to this state. Based on these differences, it is argued that Alaska needs its own unique law-related education.

The appendix of this document contains ten suggested ways of using our own law-related education in Alaska's secondary classrooms. Ultimately, it is hoped that Alaska teachers and lawyers will join together to create a collection of Alaska-specific materials which are available by computer to all teachers in Alaska who wish to use law-related materials or methods in their classrooms.

What Is Law-Related Education?

Law-related education (LRE) teaches students about the legal foundations of our society and the rights and responsibilities they have as citizens within that society (Speirs, 1985). In its most limited sense, its goal is to provide students with a basic understanding of the law (Start, 1987). However, its goal can be much more, as illustrated by the law-related education learning outcomes outlined on page 9. An analysis of various definitions of law-related education reveals many different approaches to the topic.

The United States Congress has provided one way of approaching law-related education. Since the Law-Related Education Act of 1978, Congress has defined law-related education as an

> education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which they are based. 20 U.S.C.A. 2965(b)

In short, law-related education helps students learn about the law and our legal system. Law-related education, however, is **not** specialized legal education. Instead, it is a more general education which prepares students for citizenship in a constitutional democracy.

This definition also reflects the belief of Isidore Starr and others that law-related education focuses just as much on values as on knowledge. Successful instruction results not only in an understanding of law in our society and an appreciation for legal processes, but it also assists students in learning moral reasoning or ethical analysis (Starr, 1977; Freund, 1973). Although some definitions omit this aspect of law-related education, it is difficult to conceive of a legal decision which does not ultimately revolve around a consideration of values.

A second way of approaching law-related education is to view it as a set of practices, rather than a discipline with a well-defined focus of study (Kaplan, 1987). The Study Group on Law-Related Education (1978) defined law-related education as

> those organized learning experiences that provide students and educators with opportunities to develop the knowledge and understanding, skills, attitudes and appreciations necessary to respond effectively to the law and legal issues in our complex and changing society. (pp. 36-37)

This definition focuses on the abstract nature of law. Law-related education, then, can be approached in as many different ways as there are creative minds to discover those ways. Unfortunately, this definition creates a disadvantage since law-related education tends to become lost in the issues it attempts to address (Start, 1987).

A third way of approaching law-related education is to focus more on a functional definition. The Law-Related Education Evaluation Project defined law-related education as

> a program of instruction designed to provide students with conceptual as well as practical understanding of the law and legal processes and to equip them with knowledge of both their rights and responsibilities. Many LRE materials provide a foundation for improved citizenship skills, enhanced ability to work within the legal system to settle civil grievances and deal with criminal problems, reasoned understanding for the basis for rules, and favorable attitudes toward law enforcement and the justice system. The teaching strategies developed for use with these materials are designed to achieve several goals: To actively involve all young persons, including those who have difficulty becoming engaged in conventional classroom work; to expand avenues for demonstrating competence beyond those offered through traditional testing; and to create favorable settings for nonthreatening interaction between young persons and police, attorneys, and other justice personnel. (Beckett & Miller, 1983, p. 1)

This definition provides for a program of instruction, citizenship training, and teaching strategies.

The program of instruction of law-related education comes in three forms (Naylor, 1984). The approaches are not mutually exclusive and should be viewed on a continuum (Gallagher, 1987). At one end of the spectrum is the special program, such as "Law Day." Law-related education may also appear as a special unit or class, such as "Youth and the Law." At the other end of the continuum is integration of law-related education into standard courses, such as history or English.

Each approach has its advantages. Special programs draw attention to law-related education and increase interest in the area of study. When law-related education assumes the form of a special class, it appears to make a positive difference in knowledge, skills, and attitudes about the law, at least over the short term. The preferred approach by Naylor (1984) and Gallagher (1987), however, is systematic integration, at least within social studies. Under this program of instruction, law-related education is carefully infused throughout the elementary and secondary curriculum. It is believed that such integration leads to the best results in terms of both the quantity and quality of instruction given (Naylor, 1984; Gallagher, 1987).

At its core, law-related education is one form of citizenship education (Center for Action Research and Social Science Education Consortium, 1984). There are many approaches to citizenship education, including moral development, critical analysis of pressing social issues, improved instruction in the academic disciplines that undergird citizenship (such as history, humanities, and the social sciences), and law-related education. Some would restrict law-related education to judicial matters, or to the constitution. Others try to stretch it to include virtually the entire political system, thus making it into civic-related education (Butts, 1980). The better view is to use a variety of approaches to citizenship education, including law-related education. The end result is that law-related education helps students become more informed and effective citizens (Study Group on Law-Related Education, 1978).

The teaching strategies, above all else, are what makes law-related education go. Its focus is not simply on content, but includes both content and method (Gallagher, 1987).

> Law-related content by itself does not improve student attitudes, build good citizenship, or reduce delinquency; but it is a convenient and effective hook upon which to hang a set cf feature that have the power to achieve these important objectives. (Center for Action Research and Social Science Education Consortium, 1984, p. 55)

An already over-burdened curriculum is unlikely to greatly expand the small amount of time already devoted to law and the legal system. Hence, the better approach to law-related education is to look for opportunities in the present curriculum to use its method to develop law-related concepts (Hawaii Department of Education, 1985).

LAW-RELATED EDUCATION LEARNING OUTCOMES

Students moved away from:	Students moved toward:
perceiving the law as restrictive, punitive, and beyond the control and understanding of the people affected	perceiving law as promotive, facilitative, comprehensible, and alterable
perceiving people as powerless before the law and other socio-civic institutions	perceiving people as having potential to control and contribute to the social order
perceiving issues of right and wrong as incomprehensible to ordinary people	perceiving right and wrong as issues all citizens can and should address
perceiving social issues as unproblematic	perceiving the dilemmas inherent in social issues
being impulsive decision makers and problem solvers who make unreflective commitments	being reflective decision makers and problem solvers who make grounded commitments
being inarticulate about commitments made or positions taken	being able to give reasoned explanations about commitments made and positions taken
being unable to manage conflict in other than a coercive or destructive manner	being socially responsible conflict managers
being uncritically defiant of authority	being critically responsive to legitimate authority
being uncritically responsive to authority	being responsibly opposed to illegitimate authority
being illiterate about legal issues and the legal system	being knowledgeable about law, the legal system, and related issues
being egocentric, self-centered, and indifferent to others	being empathetic, socially responsible, and considerate of others
being morally immature in responding to ethical problems	being able to make mature judgments in dealing with ethical and moral problems (McKinney-Browning, 1987, pp. 10-11)

Ten Reasons for Teaching Law-Related Education

1. Research Supports the Effectiveness of Law-Related Education

Over a three year period, the Center for Action Research and the Social Science Education Consortium conducted an evaluation of the effectiveness of a national law-related education project (Center for Action Research and Social Science Education Consortium [CAR and SSEC], 1984). This evaluation reviewed the efforts of five organizations in implementing law-related education: the American Bar Association's Special Committee on Youth Education for Citizenship, the Constitutional Rights Foundation, Law in a Free Society, the National Institute for Citizen Education in the Law (formerly the National Street Law Institute), and the Phi Alpha Delta Public Service Center. Over the three year period, the evaluators observed 69 law-related education classrooms in 36 schools in various parts of the country. The primary focus of their observations was the potential for law-related education to affect delinquent behavior and factors associated with delinquency, with a secondary focus on its ability to produce changes in students' knowledge of and attitudes about the law. The study found measured improvements in each succeeding year in teacher training, administrative support, classroom practices, and student outcomes. As classroom practices more closely approximated the reviewers' recommendations, the effects on students were found to be more uniformly favorable.

In 1981, the Center for Action Research and Social Science Education Consortium reviewers observed local law-related education programs in order to evaluate their potential for affecting delinquent behavior and factors associated with delinquency. Assessment of actual student outcomes as to these factors showed that equal numbers of law-related education classes produced predominantly favorable and predominantly unfavorable outcomes (Law-Related Education Evaluation Project, 1981). Despite this surprising result, there was a silver lining to the cloud. Evaluators were able to begin to isolate those practices that tended to contribute to effective law-related education, as well as those which were associated with undesirable outcomes.

In 1982, the second year of the project, only teachers who had been trained based upon the prior year's research were included in the project. In one school, students were randomly assigned to three law-related education classes and three control classes. The results for these students were 22 favorable outcomes (14 of them significant at $p < .05$, one-tailed) and only one unfavorable outcome (nonsignificant) out of 32 possible. For the remaining 27 classes in the study, favorable effects outnumbered unfavorable ones two to one. Significantly, though, five classes (out of 30) produced predominantly unfavorable outcomes (Social Science Education Consortium and Center for Action Research, 1983). These latter two results are open to question, since there was a lack of strong equivalence in comparison classes at some sites. Based on continuing variations in the quality of implementation, the list of effective practices was further developed and expanded. Training for the 1983 study incorporated these improvements.

In the classroom impact portion of the 1983 study, the reviewers used various questionnaires to test students' knowledge of the law-related curriculum, to assess their attitudes relating to various factors thought to be theoretically and empirically related to delinquent behavior, to determine the frequency with which students had engaged in various types of delinquent behavior, and to allow students to rate their courses. The results of these various questionnaires, given to 857 sixth through eleventh grade students, were evaluated by measuring 42 variables. These results were supplemented by classroom and teacher training observations, teacher questionnaires, and analysis of various documents.

In one junior high school, an experimental design was used. All ninth graders were randomly assigned to either law-related education (two different teachers) or traditional civics (the control group) classes. The quality of instruction was held relatively constant across the classes since all of the teachers involved were skilled in the use of innovative teaching strategies. Out of a total of 42 variables, 18 were found significantly favorable for one teacher and 24 for the other teacher ($p < .05$). Using a less stringent test of significance, five additional variables were significantly favorable for the first teacher and four for the second ($p < .10$). There were no variables unfavorably affected in either teacher's classes. Overall, student outcomes in 19 of the 21 classes studied were either predominantly or entirely favorable. In the two classes showing predominantly unfavorable outcomes, the difference was slight (CAR and SSEC, 1984).

The researchers concluded that most of the differences in outcomes appeared to be due to the quality of implementation, both in and out of the classroom, of law-related education. Based upon all of these studies, researchers made six recommendations for improving the implementation of law-related education: use and adequate preparation of outside resource persons, use of good teaching practices to increase the quality and quantity of instruction, increased student interaction and active participation through the use of group work, support and involvement of building administrators, and professional peer support for teachers (CAR and SSEC, 1984). These recommendations are explored in further depth later in this document.

Accongio and Vaughan (1987) looked at another law-related education project. They evaluated the School of Law and Government, a law magnet program which was in its sixth year as a school-within-a-school in Rochester, New York. The study compared the pre- and post-administrations of various test instruments, both cognitive and affective, on the magnet students and control groups in the same school who had similar academic, age, and demographic profiles. Applying analysis of covariance to the data, the law magnet students were found to have performed significantly better than the non-magnet students on the cognitive aspect of the evaluation ($p \leq .001$) Applying the same test to the cognitive factors, it was found that students in the magnet group made a statistically significant movement toward greater locus of control, or the belief that they can exercise control over their own lives in this society and can effect changes ($p < .05$).

Dolores, Langolis, Rosenblum, and Bulkin (1987) evaluated a New York law-related education project and came to a somewhat different conclusion. A review of the project by the Office of Educational Assessment/High School Evaluation Unit concluded that the program had met its objectives of establishing partnerships with educational agencies, training teachers and police officers in course content, methods, and materials, and developing curriculum materials. It further found that students involved in the project significantly improved their knowledge of legal issues, moving from an average pretest score of 21.6 (out of 50 items) to an average posttest score of 32.8 ($t = 13.24$, $df = 106$, $p < .05$). However, the program did not meet its objective of improving student attitudes toward the legal system. The mean difference between the attitude survey pretest and posttest was not significantly significant ($t = 1.38$, $df = 95$, $p > .05$). The Office of Educational Assessment, which had not set up the review, found the evaluation process seriously flawed and therefore concluded that the meaning of its findings were ambiguous. The program had not used a control group of non-program students to determine whether changes were due to program participation or other unrelated factors. The attitude survey included only positive statements regarding law-enforcement agencies, thereby possibly suggesting to students that there was a correct response. There was no anonymity on the attitude survey and the surveys were collected by the same authority figures who graded the students. In addition, many of the recommendations of the other research efforts were not followed. The curriculum materials were not field tested, the police officers who co-taught the classes spent the rest of their time providing a police presence in the school, there was no prior training of teachers, and some police officers used the teaching opportunity to further their view of the law.

It is clear, then, that

> [a] belief that everything called [law-related education] will have a uniform effect on students' behavior or perceptions is unreasonable. (CAR and SSEC, 1984, p. 37)

When properly implemented, law-related education can be an effective educational strategy.

2. Law-Related Matters Have Traditionally Been Part of the School Curriculum

One influence on what is taught in schools is adherence to tradition (Tyler, 1949). Tradition is determined by examining the established disciplines, as well as what expert opinion says needs to be covered (Brandt & Tyler, 1983). The highly traditional curriculum which results from this process is often referred to as the core curriculum or the classics (English, 1986; Adler, 1982).

Law-related education, as a form of citizenship education, has traditionally been included as part of the core curriculum.[1] During the first three hundred years of education in the United States, from 1607 to 1900, what is now called the social studies was created through a largely evolutionary process. As the social studies gradually emerged, one focus of the resulting course of study was civics (State Social Studies Curriculum Review Committee). Butts (1980) argues that citizenship education is the first of the basics. The original purpose of universal public education as viewed by the founders of the American republic was to prepare all persons for their roles as citizens in the new representative democracy. The basic purpose for teaching everyone to read and write was not so that they could get a job or get into college, but so that they could perform the duties of citizenship.

By the early 1900's, civics held a firm place in the curriculum (Lynd and Lynd, 1956). The Committee of Ten included civil government as a part of history in both the 8th and 12th years (Report of the Committee of Ten on Secondary School Studies, 1892). The Commission on the Reorganization of Secondary Education (1918) included civic education within its cardinal principles, which represented both the present and desired elements of education. The Committee on Social Studies, a sub-group of the Commission, proposed a new way of organizing the social studies. The Committee believed that citizenship education was the social responsibility of the secondary school and that the development of good citizenship should be the special province of the social studies in the high school. As part of its proposal, the Committee included one year of civics in the junior high school years and one year focusing on the problems of democracy for the twelfth grade. This latter course was the first time that a responsible agency had advocated the classroom study of contemporary issues, as distinguished from formalized subjects (Wesley, 1957). The sequence of studies proposed by the Committee was to gain wide support (State Social Studies Curriculum Review Committee).

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[1] Although there are numerous examples of citizenship as part of the core curriculum, education in the law is rarely mentioned as a specific goal prior to 1962. The Educational Policies Commission (1938) posited four objectives of education. One was civic responsibility, which included law observance, in that the educated citizen respects the law. In 1951, the Twenty-Second Yearbook of the National Council for the Social Studies listed 24 characteristics of a good citizen, including competency in the law. It may be that competency in the law is simply accepted as an essential part of citizenship training. In that sense, the teaching of matters related to the law holds a firm place in the curriculum (Glade, 1987).

Today, citizenship education remains a priority goal of our schools. Goodlad (1984) developed a carefully refined statement of the goals of schooling in the United States today through the deliberate analysis of hundreds of goal statements adopted by school districts and state departments of education. He found that citizenship participation was a primary goal for schooling in the United States. This includes developing knowledge of the basic workings of government, as well as a commitment to democratic values and a willingness to participate within that system. Sizer (1985) made similar findings. His review of the general goals of both public and private high schools found that those goals generally included citizenship and civic responsibility. Sizer believes that there are three chestnuts of American educational thought which all students should be required to master. One of these is civic understanding.

> Civic understanding means a grasp of the basis for consensual democratic government, a respect for its processes, and acceptance of the restraints and obligations incumbent on a citizen. These restraints and obligations are eloquently summarized in the Bill of Rights. One need go not much further: if all American citizens had mastered at the least the complex principles there, this would be a more just society. (Sizer, 1985, p. 86)

Even those who argue that schools are mistaken in attempting to assume broader aims include citizenship education within their view of the limited goals of schools (Martin, 1980). Adler (1982), for example, posits three main objectives of schooling, one of which is an adequate preparation for functioning as intelligent and responsible citizens.

Our nation's courts have made similar findings when called upon to do so. The United States Supreme Court views public schools as vitally important in the preparation of individuals to participate as citizens (*Board of Education v. Pico*, 1982). This preparation is normally left to the states. All state constitutions contain explicit language pertaining to the legislative duty to provide for public education (Article VII, section 1, Alaska Constitution). Few courts, however, have defined the components of an educational program which will meet the state's educational goals (McCarthy and Deignan, 1982). Where they have made the attempt, civic education has been an explicit goal. In West Virginia, a thorough and efficient system of schools has been defined to include preparation for citizenship as one of its primary goals. This means development in every child to his or her capacity of

> knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance. (*Pauley v. Kelly*, 1979)

In Alaska, the entity most responsible for determining educational goals is the local school district, with assistance from the state [4 A.A.C. 05.080(d)]. Alaska's Model Curriculum Guide provides that secondary social studies students will understand law as one of the processes of government (Office of Instruction Improvement and Evaluation, 1987). Local districts mirror this requirement. For example, the Juneau School District Board of Education believes that each student should receive an education which will allow her to

> become an effective and responsible contributor to the decision-making process of the political and other institutions of the community, state, country and world. (Juneau School District, Board Policy 1131)

Training in citizenship, which includes law-related education, has long had a place in the nation's and state's core curriculum. Tradition is a strong reason for including law-related education in the curriculum of Alaska's schools.

3. Law-Related Education Tends to Increase Student Interest in Matters Related to the Law

Although legal matters have long held an important place in the curriculum, their treatment has often been characterized by routine treatment and neglect. In the past, secondary students have learned little about the law which seemed relevant (Phi Alpha Delta Law Fraternity, 1982). Students were required to memorize the definitions of legal terms, the names and holdings of important cases, the provisions of important statutes and the constitution, and other details. Little of this information was current, and less was connected in any way to the lives of the students.

This focus on fact-based teaching led to boring classes and superficial treatment of the material. One of the primary culprits, textbooks, are often uninspiring in the area of civics and government (National Assessment of Education Progress, 1978; Remy, 1987). Worse, since the judicial branch is often the last branch covered in the text, a full curriculum led to this branch being overlooked entirely in some schools. In the short run, useful teaching opportunities were often missed. In the long run, this methodology produced Americans woefully uninformed about government (Glade, 1987).

Law-related education attempts to reverse this process of increasing student boredom. It takes advantage of the natural curiosity of students to learn about the law (Freund, 1973). Even using traditional teaching techniques, few students lack interest in law-related lessons (Carey, 1987). The Center for Action Research and the Social Science Education Consortium (1984) found that the vast majority of law-related education courses received superior ratings from students. Even in classes judged "harmful" in terms of student attitudes, perceptions, and behavior, students' factual knowledge of the law and legal processes increased significantly.

Law-related education may be even more effective using non-traditional teaching methods. As opposed to the traditional teaching of social studies through lectures and seatwork, law-related education focuses on a high degree of student involvement and interaction. Most lessons relating to law are experiential and participatory in nature (Hawaii Department of Education, 1985). But law-related education goes even further by supporting innovative teaching and learning practices (Beckett and Miller, 1983). For example, reliance is placed upon case studies (similar to the "good literature" advocated by Ravitch, 1989), mock trials, moot courts, and, of course, the Socratic method. Phi Alpha Delta Law Fraternity (1982) found that the Socratic method (if the method used in law school is humanized) is very popular among students and is capable of capturing their interest.

Law-related education uses both traditional and innovative methods to directly relate the law to student's lives. Students thus seem to

> value LRE classes as relevant, useful, and interesting; that the classroom interaction is rewarding - offering students who had difficulties mastering the subject matter of other courses opportunities to participate successfully. (Hunter, 1987, p. 55)

Law-related education tends to lead to an increased student interest in matters related to the law.

4. Law-Related Education May Lead to an Increased Interest In Social Studies

The traditional teaching of social studies, which includes teaching the judicial system, has been criticized. Contrast the earlier picture of the high level of importance society places on the teaching of social studies with what Goodlad (1984) found.

> Junior and senior high students viewed the social studies to be among the least useful subjects in relation to their present and future needs. (p. 210)

This view of the unpopularity of social studies is supported by other authors (Morrissett, Hawke, and Superka, 1980; Schug, Todd, and Beery, 1984).

Morrissett, Hawke, and Superka (1980) identified six problem areas in social studies: student learning, teacher instruction, curriculum, profession, culture of school, and public awareness. First, too many students fail to learn important social studies knowledge, skills, and attitudes and do not like or value social studies. A variety of studies has found that most students do not like social studies very much and do not believe that the subject is very relevant to their lives (Schug, Todd, and Beery, 1984). Goodlad (1984) observed that although the topics of social studies tend to be of great human interest and are rated of high interest by students, the subject is rated relatively low in interest. It appeared to him that on the way to the classroom, the topics of study became removed from their intrinsically human character and were reduced to dates and places which students are required to memorize for testing. Second, instruction in social studies is generally characterized by a lack of variety in teaching methods and evaluation practices, limited kinds of learning experiences, and inattention to the implications of educational research. The dominant methods of instruction in social studies are lecture and discussion based on textbooks. Goodlad (1984) confirmed this, finding that the preponderance of classroom activity in social studies centers on listening, reading textbooks, completing workbooks and worksheets, and taking quizzes. Third, the present social studies curriculum does not contribute as much as it could to learning that is useful for helping students understand and participate in the worlds of today and tomorrow. Fourth, the social studies profession is characterized by a lack of constructive interaction among the various participants, by limited opportunities for personal growth for teachers, and by confusion about the role social studies plays in the education of young people. Goodlad (1984) found that fewer social studies teachers feel satisfied with their profession than do teachers of other subject areas, and that fewer social studies teachers believe that their subject is useful to students.

Fifth, the culture and organization of the school focuses much of the energy of teachers and administrators on matters of management and control rather than on teaching and learning. And sixth, the public does not fully understand or appreciate the importance of social studies. Goodlad (1984) believes that most citizens' views of social studies may reflect their own school experiences. While viewing history and United States government as among the basics, the public perceives social studies as being less useful for later life than English, mathematics, commercial courses, shop, or extracurricular activities (Gallup, 1978; Gallup and Clark, 1987). This may be partly due to the belief among parents with children in school that the job public schools were doing in providing social studies education was rated next to last (Gallup, 1981).

Law-related education attempts to reverse the trend found in these six problem areas. Student learning is improved by providing students with more community based, real world experiences which can help students learn for themselves the importance of being active citizens. These experiences require problem solving, the achievement of group goals, and student planning and execution of projects. Teacher instruction is improved by using more active learning experiences and a greater variety of teaching methods. A crucial component of effective law-related education programs is the use of current educational research to modify teaching techniques. The curriculum focuses on learning that is both relevant and useful. Effective law-related education programs are characterized by both peer and administrative support to improve teacher attitudes and effectiveness. Due to students' inherent interest in law, law-related education teachers are often able to substitute interest for management and control needs. If that fails, management and control may be used as a learning experience within the ambit of law-related education (ie, using contempt procedures for student discipline problems). Finally, public support does exist for social studies at the secondary level, especially for those elements of social studies that can be associated with the development of patriotic citizens (Gallup, 1979). Effective law-related education programs make full use of this public support in developing their programs. In each of the six problem areas, then, law-related education has the potential to increase the interest in social studies.

Law-related education tends to not only increase student interest in matters related to the law, but also has the potential to increase interest in other social studies courses (Pereira, 1988). If the techniques of law-related education are used in other courses, both within the social studies area and outside of it, it is expected that an increase in student interest in schooling will result.

5. Law Is Everywhere in American Society

It bears repeating: law is everywhere. Hanna (1984) sees government involved in our lives from womb to tomb.

> Government regulations are a part of our lives from womb to tomb. We are born in a government licensed and regulated hospital, assisted by government licensed doctors and then given a birth certificate. We die and are buried by a government licensed undertaker. In between birth and death, government requires that we go to school and register for the draft. (p. 1)

The law is with us from the moment we are hatched to the time when we are matched and finally dispatched (Starr, 1988). It is even there pre-womb and post-tomb (Gross, 1977). Laws govern at least some aspects of all basic human needs and activities, including eating, drinking, obtaining shelter, working, driving, and sleeping. Many of the materials developed for law-related education contain lessons on the extent of law in our lives (Bloom, 1987). The result of these explorations is that it would be difficult to find any activity or relationship which has no legal connection.

Because law is so prevalent in our society, all citizens, including students, tend to be much more legally literate than they (or we) believe (American Bar Association, 1988). We live in an educational world in which a wide variety of institutions educate, including schools, libraries, museums, day-care centers, radio and television stations, offices, factories, and farms (Cremin, 1976). Further, students receive a large part of their education on the street. These institutions, however, do not teach enough about the law, either in terms of quantity or quality, to prepare students to survive in a society dominated by legalities. It is an accepted maxim that "ignorance of the law is no excuse" (Curd-Larkin, 1987). It is the goal of law-related education to take advantage of the information provided by this multitude of educational institutions to build upon the legal knowledge which they provide. By giving students the opportunity to obtain a literate understanding of the legalities that interface with our daily lives, law-related education attempts to lessen student ignorance of the law.

> It is impossible to live civilly without law and it is necessary to understand basic legal rights and responsibilities to live well and to live right in a society governed by law. (American Bar Association, 1988)

Since law is everywhere, law-related education seeks to help students succeed in life in our modern legalistic world.

6. Law-Related Education Helps Students Become Effective Citizens

In addition to tradition, another influence on what is taught in schools focuses on the needs of the learner (Tyler, 1949; Brandt & Tyler, 1983). In order to participate in a democratic society, students must learn the rules of the game. Hanna (1984) believes that one of the goals of schools must be to prepare high school students for an active role in our democratic society.

> Citizenship is the quality of an individual's response to membership in the community of the locality, state, nation and world. Because schools are a part of society and because ours is a society based on the premise that people are able to govern and direct themselves through law, it is important that the total school experience offer opportunities for students to learn and practice their roles, rights, and responsibilities within legitimate government.
>
> The student shall:
>
> 1. understand the structure, governance and governmental heritage of society (communities, state, national, world).
> 2. understand the importance of effective participation in fulfilling his/her obligation to society.
> 3. have developed the skills to participate in a democratic society as a result of his/her total school experience. (State Social Studies Curriculum Study Committee, p. 40)

In order to survive, students must gain an understanding of how government works and must obtain sufficient information to make government work for them.

One of the goals of law-related education is the provision of skills to students to allow them to function in our society as effective citizens. This includes teaching students their rights and improving their citizenship skills.

The information provided will help them to avoid legal problems and, if they do arise, help them deal effectively with them. Law-related education emphasizes basic skills, such as reading and writing, in order to handle simple situations. At the same time, higher-level skills are taught, such as interpretation, analytical thinking, the ability to persuade others, and the ability to reach decisions. The ultimate goal is citizen empowerment, the provision of the skills, knowledge, and attitudes needed to function effectively as a citizen in a democratic society.

7. Law-Related Education Helps Students Become Responsible Citizens

Another major influence on what is taught in schools is the nature of the society in which the students are to live, as well as the needs of that society (Tyler, 1949; Brandt & Tyler, 1983; Brandt, 1988). This social-utilitarian approach makes what is taught a means to an end, rather than an end in itself (English, 1986). The means (or the purpose of social studies) becomes the cultivation of good citizenship: students will come out of school and be not only effective citizens, but also responsible citizens (State Social Studies Curriculum Study Committee). The ultimate end is the survival of society.

Effective citizenship, as described in the previous section, is one side of the citizenship coin. The power of effective citizenship, however, requires the exercise of responsibility. The other side of the coin, therefore, is the development of responsible citizens. One of the primary goals of education is the development of citizenship and political understanding so that students become effective and responsible citizens.

Responsible citizens are what preserves society. Citizens who are active, committed, and knowledgeable people are what makes democracy work (Speirs, 1985). Many believe that our democracy is only as good as each succeeding generation's commitment to the ideals and institutions which comprise it (Van Camp, Firestone, Montgomery, Collins, & Hanson). If democracy is to survive, all citizens, rather than a select few, must exercise their responsibilities.

One of the primary goals of law-related education is the provision of the knowledge, skills, and attitudes needed for students to function throughout their lives as responsible citizens (Hawaii Department of Education, 1985; Pereira, 1988).

> Law-related education helps to develop young citizens who can sustain and build our republic by making a reasoned and informed commitment to democracy. (Van Camp, Firestone, Montgomery, Collins, & Hanson, p. 2)

The knowledge and skills needed to be a responsible citizen are similar to those required to be an effective citizen. At the same time that law-related education increases students' knowledge of the justice system and government as a whole, it contributes to the development of the skills needed to be a responsible citizen. By helping develop positive attitudes about the law, the justice system, and responsible citizenship, law-related education programs enhance the civic responsibility skills of tomorrow's citizens (Hunter, 1987).

8. Law-Related Education May Act as a Deterrent to Juvenile Delinquency and Youth Crime

Law-related education, when properly implemented, can serve as a deterrent to delinquent behavior and can have a significant impact on developing more constructive attitudes toward the legal system (Center for Action Research and Social Science Education Consortium, 1984). This occurs by improving student attitudes toward authority, by increasing belief in and respect for the law and legal concepts, and by fostering social responsibility, personal commitment for the public good, and effective participation. Law-related education can have a positive influence on students' attitudes and conduct, in school and out. This alone makes law-related education a valuable tool of societal survival.

Social control, labeling, and strain theories contain a number of elements established by previous research as causally related to law-abiding behavior (Hirschi, 1969; Merton, 1938; Cloward and Ohlin, 1960; Becker, 1973). These elements include commitment to and involvement in conventional activities, attachment to other people, belief in the moral validity of social rules, greater equality of opportunity, and positive labeling.

Law-related education, if properly conducted, has a greater opportunity to affect all six of these variables than regular classroom work (Center for Action Research and Social Science Education Consortium, 1984). Students place a higher value on law-related education, thus building commitment. Law-related education provides opportunities for building attachment to teachers and to outside resource persons. As students become more enthusiastically involved in law-related education, they increase their involvement in conventional activities. As students see how the law works and why society needs laws in order to organize itself, their belief in the fairness of rules increases. (Note, however, that if the school is not managed in a just manner, this effort of law-related education may fail.) The teaching methods of law-related education are specifically designed to provide greater equality of opportunity in the classroom. Finally, adults involved in law-related education have an opportunity to attach positive labels to the students involved.

It is believed that the greater the degree that law-related education causes these elements to be present, the less a young person will need to obtain personal rewards from delinquent peers. In addition, the cooperative tasks of law-related education should affect friendship choices directly and lead to association with nondelinquent peers. As the individual associates more with nondelinquent peers, it is less likely that delinquent behavior will ensue. The results of the three year study by the Center for Action Research and the Social Science Education Consortium (1984) show that effectively implemented law-related education has the potential to improve students' behavior.

9. Law-Related Education Encourages Peaceful Conflict Resolution

Law-related education has as one of its goals the fostering of an understanding of and willingness to use democratic procedures when participating in decision-making and the management of conflict. Law-related programs have been successful in meeting this goal. Students in effective programs have been found to be less likely to use violence as a means of resolving conflict (Center for Action Research and the Social Science Education Consortium, 1984). Through the use of law-related education materials which provide for an enhanced ability to work within the legal system to settle grievances and deal with criminal problems, they have obtained the knowledge, skills (including problem-solving skills), and attitudes necessary to act as responsible citizens and to use democratic processes to meet their goals.

10. Law-Related Education Has Significant Community Support

External influences have a strong impact on what is taught in schools (Armstrong, 1989; English, 1986). Interest group pressures, or what may also be called community support, play a big role in this process. Law-related education is no exception. The initial push for law-related education came from prominent judges and educators. The future of law-related education will be determined by whether a broad base of support can be established within the various states and local districts (Start, 1987).

Lawyers play an influential role in society, often exerting more power than one would expect from their small numbers. The use of **law**-related education takes advantage of this term (as opposed to calling it citizenship education) to enlist strong support from the legal community (Butts, 1980). Law-related education has taken advantage of the growing trend toward including the community in the school's programs. It is able to take the lead in this area due to the legal profession's willingness to volunteer for classroom presentations and to work with teachers and administrators on program development (Start, 1987). Schools bringing lawyers into the education process obtain not only the benefit of their skills, but also pressure to continue law-related programs.

Community support for law-related education has been developing for many years. In 1971, the American Bar Association established its Special Committee on Youth Education for Citizenship in order to facilitate the use of law-related education (Butts, 1980). Since 1979, the National Institute for Juvenile Justice and Delinquency Prevention has funded a national effort through the Law-Related Education National Training and Dissemination Program (Center for Action Research and the Social Science Education Consortium, 1984). This program has lent support to five national LRE projects: the American Bar Association Special Committee on Youth Education for Citizenship, the Center for Civic Education/Law in a Free Society Project, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, and the Phi Alpha Delta Law Fraternity, International Phi Alpha Delta Public Service Center (Speirs, 1985). Other groups involved in supporting law-related projects include the Social Science Education Consortium, Inc., the Juvenile Justice Clearinghouse, national and local bar associations, local individuals involved in the legal process (for example, lawyer members of local boards of education), and other groups and individuals whose lives are spent enacting, interpreting, or enforcing the law (Office of Juvenile Justice and Delinquency Prevention).

Law-related education, as a project of the Office of Juvenile Justice and Delinquency Prevention, has moved into its third stage. The first stage, from 1978 to 1981, emphasized research and development. During the second stage, from 1981 to 1983, the focus was on expanding the evaluation being performed and making law-related education a permanent part of school programs.

Institutionalization of law-related education, one of the primary goals of the second stage, requires that those aspects of the program which make it effective become a well-established, structured part of the curriculum. To be institutionalized, the program itself (as opposed to the people involved in it) must become self-perpetuating. There are seven factors which have been identified as critical to the institutionalization of law-related education (Center for Action Research and Social Science Education Consortium, 1984). There is agreement on what law-related education involves. Administrators actively support law-related education. There is more than one trained teacher in the school using law-related education. All portions of the school use the strategies and techniques found effective in law-related education. Outside resource persons are used in law-related education classes. Law-related instructional materials are made available to students to the same extent that other instructional materials are made available. Participating teachers and administrators can document the known effects of law-related education. It is believed that congruence of these seven factors will increase the likelihood that law-related education will become a permanent part of school programs. By continuing to increase the support and involvement of key professional and community groups in law-related education, these seven factors will be favorably impacted and the survival and growth of the program will be encouraged.

The present stage, begun in 1983, focuses on training and dissemination of materials. The effort is to reach out to more people in more states and to expand the influence of law-related education on the curriculum in American schools (Speirs, 1985). The efforts of the legal community, when combined with a national network of competent and creative law-related educators, produces a great deal of pressure in support of law-related education.

Ten Characteristics of Effective Law-Related Education Programs

The success of law-related education depends upon the application of effective teaching methods to students' natural interest in the law. More successful programs have more of the following characteristics.

Students come to school with a natural curiosity about the law. Carey (1987) found that, even using traditional teaching techniques, few students lack interest in the law. If teachers simply wish to impart knowledge of the law without harmful side effects, they need only obtain the support of administrators and choose the materials they use carefully. However, if teachers want more and wish to conduct law-related education programs which tend to improve students' attitudes, build good citizenship, and reduce delinquency, their programs will have more of the following characteristics (Center for Action Research and Social Science Education Consortium, 1984). The natural curiosity of students for the law can become a take-off point. How high and how far the program goes depends on the extent to which the following ten characteristics of effective law-related programs are integrated into planning the program.

1. Outside Resource Persons Are Regularly Involved in the Program

An important facet of law-related education is building partnerships with the community. The most effective law-related education classes are those which make the most frequent use of outside resource persons (Center for Action Research and Social Science Education Consortium, 1984). Appropriate use of in-class visits by resource persons is more strongly associated with increased student attachment to teacher and school and with shifts from delinquent to nondelinquent peer associations than any other classroom practice or event.

Outside resource persons are useful for a variety of reasons. The use of outside resource persons in law-related education is one way to bring the real world into the classroom (or to bring the classroom into the real world). Students often become trapped and alienated by the paper world of the school. By bringing students into contact with massive amounts of information from the real world, students have an opportunity to interact with the world the students have to live with, rather than the paper world of the school. In law-related education, the learning environment includes not only the classroom, but also the community. Students observe legal players in action, while at the same time using them as primary sources of knowledge (Accongio and Vaughan, 1987). There are many ways to use outside resource persons. They can be invited to come to the classroom using a variety of formats for presenting information and leading discussions. Or students can travel to the expert's place of work to "see her in action" and then have a discussion following.

The use of outside resource persons gives students the opportunity to establish personal relationships with adult role models. This opportunity for "mentoring" is provided by the use in class of a wide variety of legal personnel, including judges and magistrates, adult and juvenile probation officers, state, city, and village police officers, lawyers, and non-lawyer employees in law-related offices (Van Camp, Firestone, Montgomery, Collins, & Hanson). These adult role models add credibility and reality to the curriculum, thereby influencing the development of positive attitudes toward the law.

Outside resource persons further help fill in for lack of knowledge many teachers have regarding the judicial system. Law is one area in which teachers are not experts, and thus often have a feeling of inadequacy (Start, 1987). Even classroom teachers who are experienced in dealing with a wide range of information about the legal process cannot always know the answers to specific questions. Rather than admitting ignorance, teachers often will try to bluff their way through an explanation. Sometimes students will discover this lack of knowledge immediately, and at other times will discover it later. The end result is the development of a lack of trust for teachers, schools, adults, and society in general. It is far better, in the information age, to simply say, "Gee, I don't know. Let's figure it out together" (D'Ignazio, 1988). The teacher and students, together as learners, use an outside resource person in order to discover the answer.[2]

There are five rules for the effective use of outside resource persons (Center for Action Research and Social Science Education Consortium, 1984). One, visitors should receive extensive advance preparation in the areas covered by the remaining four rules. Two, the visitor's topic should be tailored to fit the curriculum. Either the visitor should be used when the topic is under discussion, or the topic should be reintroduced when the visitor is available. Three, the visitors should use effective teaching strategies which allow them to be actively involved and interacting with the whole class. If possible, the lecture format should be avoided and time should be provided for extensive student-visitor dialogue. Four, visitors should present a balanced picture of the legal system. And five, students should be prepared by the teacher in advance of the visit by the outside resource person. The teacher's general introduction to the topic would allow the students to become familiar with the vocabulary. The visitor would then have an opportunity to use her first-hand experience to cover that topic in depth.

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[2] This view that teachers in the information age will have to increasingly admit a lack of knowledge is contrary to some notions of teacher empowerment. Maeroff (1989) believes that one of the principles of empowerment is the possession of current knowledge. He argues that teachers have often allowed their knowledge to grow old. If classroom instruction is to be improved, he believes that subject knowledge as well as teaching methodology must be improved and updated. With this information, teachers will be able to make the leap from appearing to know something to actually knowing it. Although updating knowledge and teaching methodology is certainly important for teacher empowerment, Maeroff fails to appreciate that teachers in the information age cannot know everything. True empowerment for teachers may be having the self-confidence to admit a lack of knowledge and an ability to model for students means of accessing that knowledge.

The problems faced in using outside resource persons vary with the school and its locale. In theory, urban schools should have a shortage of experts as schools compete to take advantage of their skills. In practice, there are often more lawyers and other legal resource persons willing to volunteer than there are schools using them.

On the other hand, rural schools in Alaska will have to work a little harder to find accessible experts. Many villages have Village Public Safety Officers (VPSO's) and Village Police Officers (VPO's). All villages have people who have some experience with the law: criminal defendants, witnesses, grand and petit jurors, people who have had work done for them by Alaska Legal Services Corporation (ALSC), and parties in a civil action. Further expertise can be accessed by using modern technology, such as correspondence, an audio- or video-conference, or a computer mail system (Kleinfeld, McDiarmid, and Barrett, 1986; Clark, 1989). The benefit obtained by rural schools, however, will far outweigh the burden of accessing experts. The most important resource for rural teachers, outside of themselves, is the local community. Members possess a range of skills and knowledge which embody and express community values. By using local resource persons, the school shows the community that it considers it a vital element in educating youth. The result is generation of local support for the school and its academic program (Kleinfeld, McDiarmid, and Hagstrom, 1986). Both successful village programs and law-related education programs share a belief that the community should play a major part in the educational experience (Accongio and Vaughan, 1987). The use of outside resource persons is an effective means of building partnerships with both rural and urban communities.

2. Teachers Use Methods Associated with Good Teaching in General

The use of effective teaching methods in law-related education appears to contribute not only to the achievement of purely educational objectives, but also to improvements in students' behavior and their attitudes toward teachers, schools, and the law (Center for Action Research and Social Science Education Consortium, 1984).

The literature on teacher effectiveness has elucidated the major factors which have been found to have a positive effect on student achievement. Weil and Murphy (1982) and Brophy and Good (1986) found that several major factors are related to teacher effectiveness. Teachers maintain direction and control in the management of the classroom learning environment. Classroom activities have an academic focus. Learning increases when students move through the curriculum at a brisk pace, provided that students maintain a high rate of successful performance. Teachers hold high expectations for their students. Among the most critical concerns in fostering student achievement are the quantity and pace of instruction. Learning increases when more time is devoted to academic pursuits and when students are actively engaged in learning during that time. Students are accountable for the completion of their work. When appropriate, students use cooperative learning techniques to work together.

Both the quantity and pace of instruction can be enhanced by active teaching. Rosenshine and Stevens (1986) and Brophy and Good (1986) suggest that there are six fundamental steps that teachers should follow in the instructional sequence: review, check previous day's work (and reteach, if necessary); present new content/skills; guide student practice (and check for understanding); feedback and correctives (and reteach, if necessary); independent student practice; weekly and monthly reviews.

These same methods are used in successful law-related education programs (Center for Action Research and Social Science Education Consortium, 1984). Lessons are well-organized, sequential, and well-paced. Teachers give directions which are clear and easily followed. Transitions from the prior day's lessons are provided at the beginning of the period. Teachers establish the proper mental set in their classrooms before beginning instruction. Teachers explicitly inform students about the purposes and goals of lessons and activities. These objectives are often communicated by providing students with a written outline of the material to be covered, as well as orally reviewing the list. Students are told both what they are doing and why they are doing it. Teachers treat topics in suitable depth by providing a sufficient quantity of instruction, along with depth and density appropriate to the material covered. Students work together in cooperative teams, where appropriate. Teachers then summarize and check for student understanding of materials and topics covered. Checking for understanding is done regularly and in a number of different ways, such as through polling, sampling, and random student selection. Perfunctory checks are avoided. Frequent opportunities for student practice are provided. Before moving on to the next topic or entering into a more complex aspect of the current topic, students must demonstrate a fundamental understanding and command of the current topic. Transition to the next day's project, as well as review of the work done that day, are provided at the end of the lesson (Hawaii Department of Education, 1985; Center for Action Research and Social Science Education Consortium, 1984).

High expectations are a crucial aspect of successful law-related education programs. If teachers expect students to learn at a slower rate or at a lower level, this belief becomes self-fulfilling. Goodlad (1984) observed that lower intellectual processes pervade the teaching and learning of social studies. He rarely observed instruction going past the mere possession of information to the higher level processes of application, understanding implications, or seeking solutions to problems not already solved by the teacher or the textbook. Law-related education, which values the use of reflection, deliberation, and discourse, systematically practices higher level cognition (Pereira, 1988). The depth, and thus high expectations, built into law-related education gives all students, including those locked in the cycle of basic skills learning and compensatory education, the opportunity to use higher level cognitive skills.

Two examples may illustrate these high expectations. First, law-related education often involves students and teachers dealing with controversial topics. Effective teachers consciously and explicitly try to incorporate controversial issues into their lessons, and have the skills necessary to handle discussions of controversial topics, whether planned or unplanned (Center for Action Research and Social Science Education Consortium, 1984). The success of these teachers is based both on their having taught their students the skills needed for dealing with controversial issues, but also the high expectations which they have that their students can handle these issues. Second, in many classrooms, there may be students who are involved in the juvenile justice system. Often, these students know more about the judicial process than their teacher. If the teacher has high expectations for these students, she may take advantage of what they have learned in the real world and allow them to become teachers of not only their peers, but also of the teacher himself.

Good teachers have high expectations for their students.

This factor, as well as other factors associated with good teaching in general, are used by teachers in effective law-related education programs.

3. Students Actively Participate in the Learning Process

All law-related education programs actively involve students in the learning process. It is the interactive, activity oriented teaching strategies that make law-related education successful. Goodlad (1984) found that the normal method of teaching secondary students in America is through lecturing. This method is relied upon because it is an efficient and economical method for providing information to a large number of students. Social studies is primarily taught in the same way (Morrissett, Hawke, and Superka, 1980). The chief limitation of lecturing is that it limits active participation among students. It is able to provoke discussion to a limited extent, but it cannot produce the volume of participation necessary to read and learn actively from content materials.

In law-related education, the lecture method is only used where what is being taught can take advantage of the strengths of that method. Long lectures have been found to be the **least** effective approach to helping students understand the law (Phi Alpha Delta Law Fraternity, 1982). Instead, short lectures of from 5 to 10 minutes may be useful to set the stage for a class. For example, short presentations are used to obtain an informal evaluation, provide background information, or serve as an introduction.

Rather than whole-group instruction, law-related education uses more experiential and participatory techniques. Classrooms are organized in such a way as to create an environment that promotes student participation in the learning process. The abstract nature of law is made concrete through the various participatory experiences available to students. The four primary in-class methods are: case studies, mock trials, moot courts, and Socratic seminars. When using the case method approach, the teacher selects a legal case or cases for the purpose of illustrating how a particular legal principle has been applied to a specific legal dispute. Students are asked to analyze the case or cases by identifying and considering the facts of the case, the legal issue presented, the arguments surrounding that legal issue, and the court's decision. In addition, the students may evaluate the decision and discuss its implications (Naylor, 1977; Board of Education of the City of New York, 1978). This procedure gives students practice in all levels of thinking, from simple factual recall to evaluation (Law in a Changing Society).

The mock trial is one of the most popular classroom activities. Modeled after the trial process itself, it involves a large number of students playing a variety of roles sufficiently varied to meet individual student interests and abilities. Ostensibly, the goal of a trial is to determine guilt or innocence or fault. Some believe that its real advantage is providing an interesting environment for examining procedural legal issues, such as the adversary system or the jury system (Naylor, 1977; Board of Education of the City of New York, 1978). Its real advantage, however, is to provide an interesting environment for exploring in depth the actual issues involved in the case. In this way, mock trials can be used in any class in which there is a theoretical or actual dispute.

Moot courts are significantly different from mock trials. A moot court is patterned after an appellate court, such as the Alaska Supreme Court or Court of Appeals. A panel of justices is asked to determine whether a lower court decision was correct or incorrect. Since the facts are not in dispute, no witnesses are called. In many ways, a moot court is like a debate, in which each side presents its arguments to the justices and they determine who wins, based upon constitutional and statutory law and basic considerations of fairness (Naylor, 1977).

Finally, the Socratic method involves teaching by asking and questioning, not telling and lecturing. Students engage in somewhat free discussion on quality materials or concepts. The teacher's role is that of a facilitator who probes student opinions, often through the use of hypothetical situations that apply their beliefs to unforseen circumstances, and keeps the discussion on track (Adler, 1983; Peck and Manemann, 1985).

Kohlberg (1973) has expressed some reservations about the use of inquiry training in law-related education. His research findings indicate that only 53% of middle class 16-to-18 year olds are fully capable of formal operational thought. He believes, therefore, that most children will have difficulty with the analytical thinking required by some law-related education materials. In part, he is correct. It is for that reason that both elementary and secondary materials have been created which are developmentally appropriate (Anderson and McKinney-Browning, 1982). The best materials will be those which are able to teach students at each of the developmental levels appropriate to them.

There are also as many out-of-class methods as the teacher is able to invent. For example, in police ride-along programs, students volunteer to ride with police during an evening patrol. In villages, students could accompany the

Village Public Safety Officer (VPSO) or Village Police Officer (VPO) on his activities during a weekend night. A visit to the police station can allow for not only the viewing of prisoner holding facilities (where youth are often temporarily held until being transferred to juvenile facilities), but also the devices used by police in their work, such as fingerprinting kits, polygraph testing equipment, videotaping equipment (perhaps even having the opportunity to view an actual tape showing the actions of an intoxicated person as she attempts to perform field sobriety tests), and breathalyzer machines.

In each of these methods, teachers use different teaching styles, different media, different activities, different people, and different environments. The end result is that students are bombarded with stimulation to take advantage of their individual learning styles. Law-related education uses active participation by students in the learning process to take advantage of the different ways students learn.

4. Students Are Presented with a Balanced View of the Law

Effective law-related education programs present to students a well-balanced view of the law (Center for Action Research and Social Science Education Consortium, 1984). Both teachers and outside resource persons should depict the system neither as incredibly infallible nor as nightmarish (Pereira, 1988). If our legal system is shown as without fault, students will doubt the presenter's credibility. If the system is shown as always failing, students will be less likely to view the law as a positive tool for maintaining social order and justice. The system must be shown in a realistic and a fair manner. If it is not, a possible consequence is a worsening of student attitudes and behavior (Center for Action Research and Social Science Education Consortium, 1984).

Traditional textbooks are a good example of how not to present a well-balanced curriculum. They often present an idealized view of the workings of American democracy. The realities of the American political system (more like the making of sausage, which is often not a pretty sight) are largely untreated, although students are certainly aware, through the media, that the system does not always work in an ideal fashion (National Assessment of Educational Progress, 1978).

In law-related education, students are presented with a balanced view of the law. Although easy to state, this characteristic is difficult to apply in the classroom. Law-related education teachers are encouraged to allow open debate of controversial issues. They should choose topics which generate strong initial differences of opinion among students, and they should require students to back their opinions with reason, rather than emotion. By being thoroughly prepared, teachers should be able to help students recognize and confront inconsistencies in their reasoning. The end result of this discussion, however, creates a major problem. The Center for Action Research and Social Science Education Consortium (1984) found that there may be a worsening of student attitudes and behavior if the system is not depicted as generally fair and just. In their observations, the discussion and debate in effective classes usually left students persuaded that existing laws and enforcement and judicial procedures are mostly necessary and just. When a contrary conclusion was reached, students learned that there are legitimate remedies for unjust laws.

This view, however, ignores the fact that until unjust laws are remedied, injustice will continue to exist. Despite reassurances by the teacher that legitimate remedies exist, students may conclude that important portions of the legal system are unfair. For example, although only 16% of Alaska's population is Alaska native, fully 34% of the state's prison population is native (Alaska Judicial Council, 1989). Alaska natives could conclude that, based upon these numbers, Alaska's judicial system is unfair toward the native population. The problem then becomes finding a way to present the system as basically fair, while at the same time recognizing that there are injustices.

Freund (1973) presents a better way of handling this situation which takes this dilemma into account. He believes that teachers cannot directly persuade students that law is mostly necessary and just. Instead, he suggests that when students see that there is a disparity between the ideal and reality, the teacher's role is to point out how far we have come in creating a just legal system and how much ground there is to advance. Once students understand the difficulties of the legal process, he believes that they will begin to feel responsible for reform of the social order to bring the legal system more nearly into conformity with our ideals. Whichever approach is taken, it is crucial to effective law-related education programs that the system be depicted neither as incredibly infallible nor as nightmarish, thereby giving students a balanced view of the law.

5. Small Group Work Is Built-in to Law-Related Education

Outside of the classroom, schools are dominated by peer groups. Small group work inside classrooms, especially cooperative learning, is an effort to use the energy and influence of peer group relationships (a free resource for improving schools) to strengthen the process of learning and improve peer group relationships. Law-related education is well-suited for exploiting the advantages of small group work.

Effective classroom teachers are skilled not only in competitive and individualistic learning techniques, but also in cooperative learning. Cooperative learning is an instructional method in which students work on learning activities in small groups and receive rewards and recognition based on their group's performance (Slavin, 1980). The essential feature of cooperative learning is that the success of one student helps other students to be successful (Slavin, 1987). In the process, students who cooperate learn to like one another.

The effective use of cooperative learning has many advantages. Not only is it likely to produce greater achievement, but it also has strong and consistent effects on relationships among different racial and cultural groups (Slavin, 1980; Slavin, 1987). This may be due to more frequent contact across ethnic lines (Slavin, 1983). Cooperative learning also has positive effects on self-esteem, the development of peer norms in favor of doing well academically, and feelings of individual control over the student's own fate in school (Slavin, 1980; Slavin, 1983; Slavin, 1987). The end result is that students tend to like school better than do traditionally taught students, although the results are mixed (Slavin, 1980; Slavin, 1983). Mixed results may be due more to different students' learning styles than to cooperative learning itself.

Overall, the effects of cooperative learning on student achievement are positive (Slavin, 1980; Slavin, 1983; Slavin, 1987). By using specific group rewards (positive reward interdependence) based on the individual learning of group members (individual accountability), the effects on student achievement may be increased.

Cooperative learning techniques should be effective when applied to law-related education. Social studies is one of the areas in which cooperative learning is most often used (Slavin, 1983). Although studies on cooperative learning in social studies have shown less consistent effects on achievement, this may be due to the traditional method of teaching social studies (Slavin, 1980). Rather than focusing on lower level learning, however, law-related education focuses on a broad range of learning outcomes, including higher order processing of information and problem solving. The more complex the outcomes, the greater are the effects of cooperative learning (Joyce, Showers, and Rolheiser-Bennett, 1987).

Research on law-related education has found that opportunities for group work built into law-related education materials typically generate student enthusiasm and improved interaction in the classroom (Center for Action Research and Social Science Education Consortium, 1984). It is believed that the use of instructional strategies derived from the current research on cooperative learning will increase the potential behavior-related effects of group work in law-related education (Center for Action Research and Social Science Education Consortium, 1984). Task and reward interdependence require students to work together toward a team reward (Slavin, 1980). If heterogeneous grouping is used, friendship choices will be affected directly, apparently by allowing students to see each other in a positive light and forming friendships on that basis (Slavin, 1980; Slavin, 1987). Heterogeneous grouping will help eliminate some of the disadvantages associated with tracking and ability grouping (Goodlad, 1984; Oakes, 1986a, 1986b). The development of group skills, along with face-to-face interaction and processing, help group members receive the greatest benefits from small group work (Johnson, Johnson, and Holubec, 1986).

Slavin (1987) suggests that effective group learning must provide for equal opportunities for success. Rather than competing against each other for limited benefits, students contribute to their teams by improving their own past performance. All students, therefore, have a chance to succeed and thus do not experience the frustration described by strain theory. Law-related education, since it relies less on previous cumulative academic mastery, should be especially effective in incorporating equality of opportunity into its structure.

As a caution, small group work can be over used. By focusing simply on this one method, time can be taken away from other, more effective ways of producing the desired outcomes (Center for Action Research and Social Science Education Consortium, 1984). Small group work should only be used where it is the most effective means of meeting the teacher's objectives.

Despite this caveat, law-related education is especially well suited for small group work. For example, mock trials require students to work together to put on their side of the case. Teachers can ensure a mix of ability levels by handpicking the members of each group. Students help each other, for example, by preparing witnesses for their testimony or in brainstorming effective arguments. Student grades can be based upon not only each student's individual performance (as compared to their past performance), but also on the preparation and performance of each of the teams.

The least mentioned activity in the law-related education literature which involves the most amount of small group work is the process of jury deliberation. In Alaska, trial juries are composed of either six or twelve members (Article I, section 7, Alaska Constitution; A.S. 22.15.150). In a criminal trial, the decision of the jury must be unanimous [Alaska Rules of Criminal Procedure, Rule 31(a)]. Although the jury is the cornerstone of the American legal system, the process in which members reach their decision is shrouded in mystery. At its best, jury deliberations will involve aspects of cooperative learning. The use of the jury process as a small group teaching technique has been underutilized. Nevertheless, law-related education is especially well-suited for small group work which involves cooperative learning.

6. Administrators Provide Strong Support for the Program

The active support and involvement of school administration, especially in-building administrators, is crucial to the success of a law-related education program. This is even more true for small high schools, where central office administrators, local school professionals, and community members must work together in fitting the instructional program to the needs of the community if a successful program is to result (Kleinfeld, McDiarmid, &

Hagstrom, 1986). The need for strong administrative support applies both to programs which are designed simply to impart knowledge of the law, as well as those which seek to improve students' behavior, attitudes, and perceptions (Center for Action Research and Social Science Education Consortium, 1984). Building administrators who do not provide even minimal support may undermine the effectiveness of law-related education classes.

When secondary schools are viewed as bureaucracies, authority is centralized. The pivotal actor in the secondary school is the principal (Miller, 1980). Effective law-related education programs, like other forms of staff development, depend on the principal's support and acceptance because he has the power in the formal reward structure and because he is the ultimate decision-maker in its formal operations. Needless to say, attention must also be paid to other players, such as department heads, curriculum developers, and, in village schools, the local advisory school board and the district superintendent.

The role of administrators may be looked at in another way. Because of the bureaucratic nature of schools, there is often a gap between what is taught about justice and democracy in law-related education classrooms, and how schools are actually run (Center for Action Research and Social Science

Education Consortium, 1984). Students learn to participate effectively in the political and social life of the United States by learning and practicing the skills needed by citizens in a democracy (Carter, 1987). Administrators who are willing to close this gap may increase the effectiveness of law-related education.

Under either view, administrators who support law-related education programs can organize opportunities for peer training and peer support, reward teachers for outstanding work, help teachers explain and justify the program to people in the community, and include the knowledge and skills of law-related education within the curriculum (Pereira, 1988). Administrators with the interest and expertise can also provide direct instructional leadership for law-related education classes. This can include observation of and feedback to teachers, help in developing course materials, and work in arranging outside resource persons (Center for Action Research and Social Science Education Consortium, 1984). Administrators can even be involved in classroom activities (Palaniuk, 1988). Without the active support of school administrators, it is difficult or impossible to create an effective law-related education program.

7. Programs Should Provide Strong Peer Support for Teachers

One of the major criticisms of present day high schools is the lack of peer support and interaction available to teachers. Teachers tend to teach in isolation in self-contained classrooms (Powell, Farrar, and Cohen, 1985). Inside schools, teacher-to-teacher links for mutual assistance in teaching or collaborative school improvement were found to be weak or nonexistent (Goodlad, 1984). A crucial component of law-related education requires a reversal of this policy by making a concerted effort to diminish an individual teacher's sense of isolation.

Law-related education is an innovative teaching technique. Teachers asked to be innovative while others continue to follow a more conventional style are likely to need more support from their peers. Assigning a team of two or more teachers in a school to receive law-related education training and to teach the subject would help meet this problem (Little and Haley, 1982). Although law-related education does not provide the time for collaboration, it does provide a common language and theme. With law-related education, there is an opportunity for colleagueship built around a common educational purpose. An important aspect of this purpose is its ability to create relationships among teachers across departmental lines. If this type of professional support cannot be obtained from within the law-related education teacher's building, support from other teachers within the district should be provided. This would give them an opportunity for discussion of classroom practices, shared preparation, and shared participation in instructional improvement (Center for Action Research and Social Science Education Consortium, 1984).

With a number of teachers teaching law-related education, there is also an increased opportunity for mutual observation and critique by one's peers (Center for Action Research and Social Science Education Consortium, 1984). Peer assistance is performed by professional peers for the assistance, guidance, and insight which is obtained. The ultimate goal of assistance is professional growth. The normal three stage approach used in peer assistance - a preconference to discuss teaching styles, method, content, and the role of the observer; the observation, which could be for part or all of the period; and a postconference, which could be either oral or in writing or both - provides many benefits. These include the establishment of communication among teachers, the creation of an opportunity to rehearse a lesson with another teacher, and the bringing to the conscious level that which many teachers do unconsciously (Chrisco, 1989). A law-related education program which includes peer assistance and support has a greater opportunity to both maintain and improve its beneficial effects.

8. Effective Programs Use Teachers Trained in the Methods of Law-Related Education

Training for teachers using law-related education is a necessary requirement for the effective implementation of law-related education. The reality is that if teachers are not interested in law-related education, it will not get into the curriculum (Gallagher, 1987). It is the classroom teacher who is most often responsible for introducing law-related education into the district's curriculum (Anderson and McKinney-Browning, 1982). Through training, teachers learn that they can obtain the skills to teach law, even though they are not law teachers or lawyers (Start, 1987).

Using classroom impact studies, questionnaires, and observation data, early studies suggested that teachers who did not participate in project-sponsored training programs were not as effective in the classroom. Further, these teachers were not as satisfied with their teaching experience of law-related education as were the teachers who had participated in formal project training programs (Law-Related Education Evaluation Project, 1981; Social Science Education Consortium and Center for Action Research, 1983). The areas in which trained or experienced teachers showed the greatest impact on their students were in producing outcomes outside the theoretical model, improving peer relations of students, increasing student belief in the fairness of social rules, and developing commitment (Center for Action Research and Social Science Education Consortium, 1984).

Interestingly, experienced teachers also derived important benefits from training. By comparing the effectiveness of two experienced teachers, a hypothesis was developed that more recent training may have a beneficial impact, regardless of the level of prior law-related education experience. Project training programs not only increased their knowledge of law-related education, but it also provided experienced teachers with gains in the areas of confidence and renewal, both for law-related education and teaching in general. These gains were reflected in classroom outcomes (Center for Action Research and Social Science Education Consortium, 1984). Due to the few number of teachers involved in this study, however, further research will be necessary to confirm these findings and evaluate the hypothesis. It appears, though, that additional training helps good teachers become better teachers.

Experienced teachers not only received benefits from law-related education training programs, but also gave benefits back to the programs. By using experienced law-related education teachers as co-trainers, programs were able to improve not only the quality of their training program, but this increased quality appeared to improve the subsequent quality of these teachers' in-class skills and helped establish peer support for participating teachers (Center for Action Research and Social Science Education Consortium, 1984). It is believed that one of the reasons for the effectiveness of the teacher-trainers is that they tended to focus on the aspects of the training which they found most difficult or with which they were least satisfied in their own training experience. These areas - presentation of clear objectives, the provision of adequate demonstrations, and opportunities to practice - showed the greatest improvement when the training was developed by teachers who had formerly been trained. Most importantly, it was realized that successful training is participatory. By engaging teachers actively in the training process, they will be more likely to use a participatory approach when they return to the classroom (Gallagher, 1987). The most effective law-related education training programs, then, may be those which include teachers as part of the training team.

Quality training is an important aspect of effective law-related education programs. Training improves the abilities of both novice and experienced law-related education teachers, and these improvements appear to be reflected in classroom outcomes. Use of former trainees as co-trainers appears to improve the quality of training programs. Training for teachers using law-related education is a necessary requirement for the effective implementation of law-related education.

9. The Program Focuses on Both Values Clarification and Moral Development

Moral development is one area in which advocates of law-related education differ. On one side are those who see the goal of law-related education as an effort to preserve and make more just the role of law (Center for Action Research and Social Science Education Consortium, 1984; Butts, 1980). This effort focuses on the creation of law-abiding citizens. Moral development, if mentioned at all, is simply a side effect.

On the other side are those who believe that the first and most important goal of law-related education is to learn moral reasoning or ethical analysis (Freund, 1983). Judgments and results are less important than the process of moving toward them. In the process of acquiring legal concepts and developing an understanding of the legal process, students develop their moral reasoning abilities. Since ethical analysis is inherent in law-related education, moral development is a crucial component of law-related education programs. The development of knowledge, as well as character, are thus pursued in concert, as equally important elements of responsible citizenship in our constitutional democracy (Pereira, 1988).

Kohlberg and Mayer (1972) found that children pass through a series of stages in their moral development. At every stage of development, a concern about justice is present. Since justice is at the core of moral development, Kohlberg (1973) believes that the marriage of moral discussion and law is natural.

The methods used in developmental moral education, as well as in the process of clarification of values, are similar to those used in law-related education. Law-related education is full of moral problems. Through case studies and Socratic seminars, students continually practice their analytical skills by reaching decisions in situations of conflict and then justifying their decisions. For example, a primary problem in bush Alaska (as well as the rest of Alaska) is child sexual abuse. On one side, advocates for child sexual abuse victims often seek the greatest possible penalty in criminal cases involving child sexual abuse. This may be at least eight years in jail [A.S. 12.55.125(i)]. On the other hand, the family of the perpetrator, or his village, may see him as a primary provider for the family or the village and therefore seek a probationary sentence. The legal process attempts to mediate between these extremes, balancing the rights of society with the rights of individuals. The result is that one learns to say "Yes, but ..." or "No, but ..." (Freund, 1973). The law is an ideal source of material for engaging the minds of both students and teachers on problems which evoke cognitive conflict. The result of the marriage of moral discussion and the law is stimulation of moral stage development.

10. Law-Related Education Has Been Integrated Throughout the Curriculum

Knowledge in high schools is compartmentalized by academic disciplines: social studies, English, math, science, and vocational education, among others. This results in a specialization of the instructional focus (Goodlad, 1984). Effective teachers, however, frequently integrate their instruction across disciplinary boundaries (Porter and Brophy, 1988). Unfortunately, while teachers generally favor integration, only minimal amounts of integration actually occur in their classrooms (Schmidt, et al., 1985). The trend, at least in rural schools, is to move away from compartmentalization and toward integration of the curriculum (Kleinfeld, McDiarmid, and Hagstrom, 1985). Integration makes the important subjects accessible to more students on a daily basis. Through infusion, law-related education has the potential to strengthen and enrich the curriculum, rather than further burdening it.

The development of law-related education over the last 25 years has followed a trend toward integration. In the 1950's and 1960's, it focused on the study of the Bill of Rights and the protections it provided for civil liberties. This led to the development of the case study method as an effective means of exploring these societal concerns. In the late 1960's, it was broadened to include practical law, conceptual law, and field experiences. In the 1970's, the war on crime reached the classroom and law-related education began to focus on the reduction of juvenile delinquency. Separate courses on various topics in the law became standard fare, and materials for use in the elementary schools began to appear. In the 1980's, the trend has been toward integration of law-related education within required courses in the social studies - civics, United States history, and American government - and to reach out to at-risk students as part of the continuing focus on delinquency prevention (Miller, 1987; Start, 1987).

Assigning law-related education to the social studies creates both an advantage and a disadvantage (Gallagher, 1987). On the one hand, it becomes a traditional, permanent part of the curriculum. However, it also pigeonholes law-related education, making citizenship the sole responsibility of the social studies teacher. Since law is everywhere, this limitation is contrary to reality. The 1990's may be the period when law-related education corrects the mistake made when, at the turn of the century, citizenship education became the special province of social studies.

The method and substance of law-related education provide effective tools for teaching in many different subject areas. Gallagher (1987) believes that the total curriculum should be examined to find points of infusion. The possibilities are unlimited. Teaching civic writing skills in the English classroom would integrate social studies, language arts, and reading curriculum in one lesson (Glade, 1987). Censorship and First Amendment rights go hand-in-hand with both American literature and art. In fact, many legal decisions may be considered examples of good literature in their own right. Patrick (1987), observing the common foundations of modern science and democracy in the Age of Enlightenment, urges the teaching of the interrelated ideas of modern science and constitutional democracy in both social studies and science courses. The exercise of a students' right to refuse to dissect a frog can lead to a discussion of not only students' rights, but also the legal responsibilities of research scientists. Laboratory safety in chemistry is closely related to occupational safety standards. Since law is everywhere, the potential for infusion is limited only by a teacher's imagination (and, of course, a lack of materials for integrating law outside of the social studies field).[3]

The most successful groups in support of the general concept of integration are those which support teaching reading and writing in the content areas. Law-related education advocates followed suit. Just as the proponents who place reading as a first priority have called for every teacher to be a teacher of reading, some law-related education advocates believe that every teacher can also become a teacher of law (Gallagher, 1987). There is, however, a difference. "Every Teacher, A Teacher of Reading" was developed by reading specialists as a defense. Reading in the content area is all about helping subject matter teachers use their textbooks, since textbooks play such a dominant role in instruction (Thelen, 1981). The role of the content teacher is not to teach skills per se, but to show students how to use reading effectively to comprehend and learn from text materials.

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[3] Interestingly, integration has been much more successful with elementary school teachers, since they are both more accustomed to dealing with concepts as opposed to substantive information as well as more comfortable with interdisciplinary approaches (Gallagher, 1987). For the latter reason, integration may be easier for village secondary school teachers.

Despite some differences, the effort to incorporate reading and writing in other content areas may serve as a guide for integrating law-related education throughout the curriculum. First, each movement faces similar problems, including traditions associated with subject matter instruction, lack of confidence by teachers in their skills in teaching in the new area, and, most importantly, viewing reading and writing (or law) as just one more burden in an already overloaded curriculum (Stewart & O'Brien, 1989; Start, 1987). Second, early advocates of reading and writing in the content areas focused on process. They believed that students used the process of learning how to read their content materials to increase their understanding of the content at the same time. There was, in essence, a marriage of convenience between process and content (Herber, 1970). By focusing on law-related education as a process, teachers in other areas may be able to use its procedures to assist them in teaching their content. For example, curiosity in Shakespeare's *Romeo and Juliet* may be aroused by using an anticipation guide. Law-related education would use a trial of the priest for the double murder (perhaps an overzealous prosecutor) of Romeo and Juliet to develop a similar level of interest. Through integration, law-related education has the potential to strengthen the curriculum.

Alaska's Unique Law-Related Education

As discussed above, the need for law-related education developed from a failure to effectively teach students about the judicial system as a normal part of social studies. Even with the profusion of generic law-related education, the need for state specific law-related education remains. Textbooks containing information on the judicial system, as well as many materials produced by national centers, are nationally created and thus the principles and procedures taught through them are often based upon federal law and procedures. State laws and procedures are often ignored. Despite the fact that there are over 100,000 different governments in the United States, students often only learn about the federal government. The best law-related education program, then, is one which supplements and modifies national materials with information regarding the unique laws and procedures of each state.

This difference between federal and state law can be seen by exploring a specific legal issue: the right to privacy. In the federal system, the right to privacy is viewed as an implied right in the United States Constitution (*Griswold v. Connecticut*, 1965). In Alaska, on the other hand, the right to privacy is specifically guaranteed by our constitution (Article I, section 22, Alaska Constitution). As the United States Supreme Court has become more conservative, states have taken the opportunity to use and interpret their own constitutions in an independent manner (*State v. Browder*, 1971). Hence, under federal law, personal possession of marijuana is illegal and not constitutionally protected (21 U.S.C.A. 801 *et seq.*). Under Alaska law, possession in the home of small amounts of marijuana intended for personal consumption is constitutionally protected as part of every Alaskan's right to privacy (*Ravin v. State*, 1975). In this area, then, a citizen of Alaska has more rights than citizens of other states.

Law-related education has handled the problem of differences between federal and state law in one of two ways. Some materials are based upon federal law and procedure. By simply changing the facts to create a local problem, these "generic" materials can be used to discuss the law and procedure in whichever state students may reside. For example, the Hawaii Department of Education (1985) has localized a nationally created document which explores various public uses of parks by giving the park an Hawaiian name.

Other materials which have been developed focus on the laws and procedures of a particular state (Board of Education of the City of New York, 1978). For example, the Alabama Administrative Office of Courts (1981) has prepared materials which provide teachers with specific information about

Alabama's laws and its system of justice. Carey (1987) created a law-related curriculum for Navajos in New Mexico. One of the purposes of the New Mexico materials was to identify and explain various areas of the law and how they affect the lives of a Navajo student living in the "checkerboard" area of the Navajo reservation. Carey's curriculum includes information on how state law is categorized; New Mexico landlord-tenant, family, and consumer law; individual rights under United States, New Mexico, and reservation law; and the civil and criminal jurisdiction of federal, state, and tribal courts. Even Alaska has created its own materials at various times (Barthel, Conn, and McDearmon, 1977; McKenzie, 1976; Alaska Youth and Parent Foundation, 1987).

Both generic and state-specific materials are difficult to adapt to the local law and local problems of a different state. The problem is twofold: determining which materials are generic and which are only applicable in a specific state, and then determining if the materials must be modified to take into account Alaska law and procedure. The ideal manner for tackling both of these problems, as done in the past (Barthel, Conn, and McDearmon, 1977), is to use teams of educators and attorneys to develop Alaska-specific materials.

Law-related education materials are designed to be adaptable to local conditions and educational resources (Anderson, 1987). Educators in this area believe that

> it would be wasteful to insist that LRE teachers take time and effort to reinvent their own instructional wheel, using resources they might better spend on adapting existing exemplary educational vehicles to the needs of their pupils. (p. 2)

Law-related education teachers should be able to use these materials and then combine them with what they have learned about local people, processes, laws, regulations, issues, organizations, and institutions. Using this combined information to design their own teaching-learning context will give their students the chance to have first-hand experience with current issues in real-life operation.

Alaska law and procedures are substantially different from those of both the federal government and those of its sister states. As discussed above, Alaskans have special rights granted by their constitution and by the broad interpretation given to it by the Alaska courts. Some law-related education materials assert that where there is a conflict between a state and the federal government, the U.S. Constitution prevails over a state's constitution or laws (Board of Education of the City of New York, 1978). This is not entirely true. States such as Alaska may provide additional rights to their citizens, if those rights do not fall below the minimum guarantees of the U.S. Constitution (*Baker v. City of Fairbanks*, 1970).

> [W]e are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead, we should be moving concurrently to develop and expound the principles embedded in our constitutional law. (pp. 401-02)

Even if provisions of the Alaska Constitution are identical or closely similar to provisions of the United States Constitution, Alaska courts may interpret provisions of the Alaska Constitution to provide additional rights.

Alaska's explicit constitutional right to privacy is one example of the additional rights provided by the Alaska Constitution. In another instance, the Alaska courts went well beyond all previous state and federal cases when it interpreted Alaska's due process clause as guaranteeing the right to a free attorney in many cases where indigent parents are fighting over the custody of their children (*Flores v. Flores*, 1979). Other areas where the Alaska Constitution provides more rights include greater protection of citizens in the area of government search and seizure (*State v. Daniel*, 1979), the right to trial by jury in all criminal prosecutions in which a person could be incarcerated (*State v. Browder*, 1971), the right to a court-appointed attorney in all criminal prosecutions in which a person has a right to trial by jury (*Alexander v. City of Anchorage*, 1971), and stricter review of government action under the equal protection clause (*Wilson v. Municipality of Anchorage*, 1983). Alaska is also the only state with a Permanent Fund (Article IX, section 15, Alaska Constitution).

Many areas of the Alaska Constitution remain to be explored. For example, the language of the due process clauses of the United States Constitution protects life, liberty, and property (Fifth and Fourteenth Amendments, United States Constitution). The Alaska Constitution, on the other hand, followed the language of our national Declaration of Independence:

> All persons in the State of Alaska are guaranteed certain inherent rights, including life, liberty, and the pursuit of happiness. (Article I, section 1, Alaska Constitution)

Although mentioned in various cases (*Breeze v. Smith*, 1972), the meaning of the right to the pursuit of happiness is still open for exploration.

Differences also exist outside of the constitutional arena. As in New Mexico, Alaska has its own methods of handling problems which are controlled by state law, such as landlord-tenant disputes (A.S. 34.03.010 *et seq.*), marital dissolution or divorce (A.S. 25.24.010 *et seq.*), and consumer complaints (A.S. 45.50.471-.561). Rural communities have local option rights (A.S. 04.11.470-.506) in order to restrict access to alcohol which many other states do not enjoy. Commercial fishing in Alaska is closely regulated by Alaska's Limited Entry Act (A.S. 16.43.010 *et seq.*; *Isakson v. Rickey*, 1976). Alaska law grants many special rights to its citizens. It allows for the traditional or cultural adoption of native children (*Calista Corp. v. Mann*, 1977). In addition to the normal rights which Alaska Natives have as American Indians, they have additional rights under the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C.A. 1601 *et seq.*) and the Alaska National Interest Land Conservation Act (ANILCA) (16 U.S.C.A. 3101 *et seq.*). Alaska law recognizes the different system of justice to which Alaska natives traditionally adhered.

> The Anglo-American system of justice differs substantially from the traditional Indian, Eskimo and Aleut systems, which predated Western cultures by hundreds of years. The cultural difficulties experienced by many of the Alaska Natives as the contemporary Anglo-American institutions reach out to the bush communities require that the State legal system use extreme care. (*Gregory v. State*, 1976, p. 379)

Finally, the structure of Alaska's court system is unique. For example, unlike the federal Court of Appeals which handles a broad range of appeals in the federal system, the Alaska Court of Appeals handles only criminal-related appeals (A.S. 22.07.020). These are just a few of the many differences between the law and procedures found in Alaska and those in other states and the federal system. Those using law-related education in Alaska should take these differences into account.

Conclusion

The effort to incorporate law-related education into secondary schools has spread across the nation. Most materials which have been developed focus on national legal issues. Some states, reacting to local needs, have created their own materials to incorporate legal issues peculiar to each individual state. Alaska is no different. Its courts interpret its own unique constitution, as well as attempting to handle legal issues faced by no other state in the nation. Based on these important differences, Alaska needs its own law-related education materials. This document, which reviews the reasons for teaching law-related education, the characteristics of effective programs, and some unique legal problems in Alaska, is intended to begin the process of creating curriculum materials for Alaska's law-related education program.

In order to continue the process begun here, it is recommended that:

1. The lesson plans in Appendix 1 be field tested.
2. Additional lesson plans be created by teams of teachers and attorneys throughout the state.
3. All law-related education materials be included within a computerized bank which is accessible by all teachers in the state.

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Regulations

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Rules

Alaska Rules of Criminal Procedure, Rule 31(a).

Appendix 1

Ten Lesson Plans for Alaska's Law-Related Education

The attached lesson plans are only the beginning of the creation of an Alaska-specific collection of law-related education materials. They contain basic information about Alaska law and procedures, as well as a proposed classroom procedure for using the materials provided.

In creating these lesson plans, it is assumed that the teachers who will be working from them have had some experience with the various techniques used in law-related education, as well as familiarity and/or access to some of the excellent generic materials developed by other organizations or states.

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LESSON PLAN 1

WHAT'S YOUR OPINION?

INTRODUCTION:

The purpose of this first lesson is for students to begin to identify some of the legal conflicts which they face as both students and citizens of Alaska. Although typically used to stimulate student interest regarding the law, it can also be used in the middle of a unit to begin studying legal issues which Alaskans must face, or at the end of a unit as a part of a final examination. Each issue involves the balancing of various interests, including those of the individual, the state, society, the school, and the employer. As students learn more about the law and the legal system, they will be able to identify more and more factors which enter into the resolution of the issues presented here and see how difficult it is to balance the interests involved and resolve these questions. Since there is no permanent right answer, it is important that students not be pressured into taking any particular position.

OBJECTIVES:

Students will be able to:

1. Identify one argument in favor of and one argument opposed to their position for each of three legal issues.

GRADE LEVEL: 7th to 12th grade

TIME TO COMPLETE: 1 hour plus homework

MATERIALS:

1. Attached handouts WHAT'S YOUR OPINION? (long and short versions)
2. Butcher paper.
3. Signs saying AGREE, DISAGREE, and BEATS ME.

PROCEDURE:

1. Have the students individually work through the attached WHAT'S YOUR OPINION? For younger students, use the shorter version.

2. Post three signs - AGREE, DISAGREE, BEATS ME - in different locations in the classroom. Read one of the statements and have the students move to the sign with which they agree.

3. At each sign, the group should brainstorm the reasons which support their position and should list all suggested reasons on butcher paper. Each group should post their reasons and one member should be chosen to report the group's responses.

4. After completing the reports for each position on an issue, the students should be allowed to review the reasons supporting each position and, if any choose to do so, to change their positions. If the individuals choose, they should have an opportunity to explain why they changed their minds.

5. Review each reason to determine whether it is based on fact, present state of the law, beliefs, feeling, rumor, opinion of others, or mass media.

6. Again, students should have an opportunity to review the reasons supporting each position and, if any choose to do so, allow them to change their positions and explain the reasons for the change.

7. Students should choose three of the statements on the handout. For each issue, students should write one paragraph. Each paragraph should identify and discuss one argument which supports their position and one argument which opposes it.

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

2. Students must fulfill the requirement of writing the three paragraphs.

WHAT'S YOUR OPINION?

Directions: Read each of the following statements. For each, select the response that most closely reflects your opinion.

1. A school should have the right to prohibit its students from participating in extracurricular activities if the students associate with persons using alcohol or drugs.

AGREE **BEATS ME** **DISAGREE**

2. A principal should have the right to search the car of a student who is found under the influence of alcohol or drugs.

AGREE **BEATS ME** **DISAGREE**

3. A school should have the right to enforce a dress code for students.

AGREE **BEATS ME** **DISAGREE**

4. A school should have the right to enforce a dress code for teachers.

AGREE **BEATS ME** **DISAGREE**

5. Adults should be allowed to use marijuana in their own home.

AGREE **BEATS ME** **DISAGREE**

6. In communities which have banned the possession of alcohol, adults should be allowed to make homebrew and drink it in their own home.

AGREE **BEATS ME** **DISAGREE**

7. The Alaska government should not have to provide help to people who are temporarily unable to find work.

AGREE **BEATS ME** **DISAGREE**

8. A person charged with a crime for which she may receive up to five months in jail should have the right to a trial by jury.

AGREE **BEATS ME** **DISAGREE**

9. A husband and wife are fighting over who will get custody of their children. If one gets a free lawyer, the state should pay for a lawyer for the other one.

AGREE **BEATS ME** **DISAGREE**

10. A landlord should be able to immediately evict a tenant who has not paid his rent.

AGREE **BEATS ME** **DISAGREE**

11. A student should be allowed to become sexually involved with his or her teacher.

AGREE **BEATS ME** **DISAGREE**

WHAT'S YOUR OPINION?

Directions: Read each of the following statements. For each, select the response that most closely reflects your opinion.

1. A school should have the right to prohibit its students from participating in extracurricular activities if the students associate with persons using alcohol or drugs.

   AGREE **BEATS ME** **DISAGREE**

2. A principal should have the right to search the car of a student who is found under the influence of alcohol or drugs.

   AGREE **BEATS ME** **DISAGREE**

3. A school should have the right to enforce a dress code for students.

   AGREE **BEATS ME** **DISAGREE**

4. A school should have the right to enforce a dress code for teachers.

   AGREE **BEATS ME** **DISAGREE**

5. Adults should be allowed to use marijuana in their own home.

   AGREE **BEATS ME** **DISAGREE**

LESSON PLAN 2

STUDENT RIGHTS 1

INTRODUCTION:

All public schools in Alaska are required to distribute copies of district student rights and responsibilities policies to students, parents, and all staff persons who deal with students. They are further required to post copies in accessible locations within school facilities, such as student and teacher bulletin boards (4 AAC 07.030). Finally, each school has a mandatory duty to instruct students regarding these rights.

> Each school district shall provide instruction in student rights and responsibilities to students in grades 1 through 12. (4 AAC 07.040)

An important part of student rights and responsibilities is the procedure used for routine, as well as chronic or serious, discipline cases (4 AAC 07.010). This lesson provides one means of carrying out part of this mandatory instruction.

OBJECTIVES:

Students will be able to:

1. Identify the procedures used in adjudicating routine school discipline problems.

2. Identify the procedures used in adjudicating serious school discipline problems.

GRADE LEVEL: 7th to 12th grade

TIME TO COMPLETE: 2 hours

MATERIALS:

1. Three sheets of butcher paper, with the following titles: DECISION, REASONS SUPPORTING SCHOOL, and REASONS SUPPORTING STUDENT.

PROCEDURE:

1. The set for this lesson is divided into three parts, each part being presented through role playing. After choosing an appropriate disciplinary matter, the offense is committed by the student in Act I, scene 1. In Act I, scene 2, the offense is investigated by the school administration. In Act II, scene 1, the student's side is heard.

2. Briefly summarize the procedures used in handling student discipline cases.

3. Divide the students into groups of three to determine the appropriate punishment, if any, in the above case and the reasons supporting their decision. (If students are more advanced, the groups members could play the roles of student advocate, school advocate, and decision maker. After the advocates make the arguments supporting their position, the decision maker makes her ruling.)

4. The whole group reconvenes. Each group reports its decision, as well as the reasons which support it. Portions of each report are written on one of three charts: decision, reasons supporting school's position, and reasons supporting student's position.

5. The role playing then resumes. In Act II, scene 2, the principal makes her decision as to how the student will be disciplined and states the reasons supporting this decision.

6. All participants then discuss the decision. What are your feelings about people who are in trouble, especially those in trouble in school? Why do schools have rules? Does the principal's decision protect the interests of the school? What rights do students have? Does the decision take those rights into account?

EVALUATION:

1. Assess student participation in the group activity and in discussions.

2. As each student becomes involved in a disciplinary matter, she will orally summarize the disciplinary procedures applicable to her problem.

NOTE:

Each year, school districts face some important decisions regarding student rights. These decisions may be incorporated into this lesson. For example, the Juneau School District Board of Education enacted a rule which punishes students for attending parties where alcoholic beverages are being consumed. This decision finds some support in the law of other states. For example, at MacArthur High School in Illinois, Rhonda Clements was suspended from a girls' extracurricular softball team by the school's principal, Marion Fox. He suspended her because she had been present at a party where minors were drinking beer. All of the evidence supported Ms. Clements' position that she had not been drinking. The court, finding that no constitutional issue had been raised, ruled that the school's action was not sufficiently egregious to justify intervention by the court. Interestingly, Ms. Clements' attorney conceded that the district could enact a rule which prohibits its athletes, during season, from attending parties where alcoholic beverages are being consumed by minors [*Clements v. Bd. of Educ. of Decatur P.S.D.N. 61*, 478 N.E.2d 1209 (Ill.App. 1985)]. In Alaska, reliance on the Alaska Constitution, especially the right to privacy, may lead to a different result. Alaska courts have not ruled on this issue.

If the school's power to control off-campus, non-school related conduct is limited by an Alaska court, the next question is where to draw the line. Consider a New York case. A student, Otto Pollnow, seriously assaulted and attempted to stab Adeline Wormell, the mother of one of his high school friends, while visiting the home of Ms. Wormell. Otto had been smoking marijuana which, unknown to him, had been laced with angel dust. The school suspended him. The court supported the school's action, holding that charges of off-campus, non-school related conduct may provide a sufficient basis for suspension from school [*Pollnow v. Glennon*, 594 F.Supp. 220 (S.D.N.Y. 1984), *aff'd*, 757 F.2d 496 (2d Cir. 1985)]. Would an Alaska court come to the same decision?

NOTE:

In some schools governed by democratic principles, students themselves create the rules and handle violations. It is believed in these schools that democracy must not only be taught, but also practiced, and that the school is the proper place for doing both. In this type of school, the entire school would determine the procedure to be followed and would then practice it, using students as advocates and judges.

LESSON PLAN 3

STUDENT RIGHTS 2

INTRODUCTION:

The constitutions of both the United States and Alaska are the sources of certain rights which all students enjoy. In some areas, the Alaska Constitution provides students with more rights than does the United States Constitution. For example, up until the late 1960's, schools were free to mandate the dress and grooming of their students. In the courts of other states and at the federal level, challenges to these requirements met with mixed results. In Alaska, *Breese v. Smith*, 501 P.2d 159 (Alaska 1972), made it clear that school rules must take into account student privacy interests.

The essence of most decisions in this area is an attempt to balance the rights of the student, especially their free speech and right to privacy interests, with the needs of the school to maintain discipline and to create an orderly learning environment. This lesson uses the moot court procedure to explore Alaska's response to this delicate balancing process.

OBJECTIVES:

Students will be able to:

1. Identify one additional constitutional right which students in Alaska possess.

2. Identify the three players - Michael Breese, his father, and the school - and their respective roles in *Breese v. Smith*.

3. Identify and list two arguments supporting Michael Breese's right to remain in school.

4. Identify and list two arguments supporting the school's right to remove Michael Breese.

5. Identify the two conflicting goals the court considered in reaching its decision.

6. List the two provisions of the Alaska Constitution on which the Alaska Supreme Court relied in making its decision.

7. Apply the arguments used by the court in *Breese v. Smith* to the new situation involving the student with purple hair.

GRADE LEVEL: 11th and 12th grade

TIME TO COMPLETE: 4 hours

MATERIALS:

1. An edited version of the court's decision in *Breese v. Smith.*

2. The attached worksheet STEVE COWPER DEFENDS LONG HAIRS.

3. Three sheets of butcher paper.

PROCEDURE:

1. The set for this lesson is established through role playing by a student (or the teacher). Someone should come to class appearing outrageous, such as with bright purple hair. Allow the students free reign to react, so that all can see whether this is disruptive or not.

2. Ask the students to discuss how this affects them. List their reasons on the board in two untitled columns, one containing reasons supporting the student's right to dress as she pleases and one containing reasons supporting the school's right to limit how students dress. Assist the students in identifying these two concepts: student rights and the needs of the school.

3. Pass out the attached worksheet and the edited version of *Breese v. Smith.* Divide the students into groups of three to read through the case and to complete the worksheet. Although each student will be required to complete her own worksheet, the students should work together to find the answers. Stress to the students that court cases must be read like love letters - once is not enough. Students may complete the worksheet for their homework.

4. The next day, students will be divided into groups of seven. The seven students in each group will be assigned the following roles: attorney for student (2 students), attorney for school (2 students), and judges (3 students). Tell the students that the

school sent home the student with purple hair and ordered him to return to school only after he was dressed and groomed appropriately. The attorney's task is to represent either the student or the school by arguing for or against the expulsion using the arguments in *Breese v. Smith*. The judges will write a paper which summarizes what they believe will be the arguments for each side. Each student will be required to write a paper and be prepared for oral argument in the class two days later. Each pair of attorneys or trio of judges will have two class periods and two evenings to outline their arguments, write their paper, and prepare for oral argument.

5. Conduct the moot court. Invite a local attorney to participate and to join in the debriefing. While each group of judges meets to make its decision, the attorneys will meet all together to discuss their arguments.

6. The judges then return and announce their decisions. The judges should list the reasons for their decisions on the board. Discuss these reasons in light of the conflict between student rights and the needs of the school.

EVALUATION:

1. Assess student participation in the group activity, in class discussions, and in the moot court.

2. Students must fulfill the requirement of writing their position paper.

3. Students will complete the STEVE COWPER DEFENDS LONGHAIRS worksheet.

NOTE:

This lesson may be changed to discuss other Alaska cases dealing with student rights, such as the right to privacy. In *Shamberg v. State*, 762 P.2d 488 (Alaska App. 1988), the Alaska Court of Appeals relied on the federal constitution to uphold a search by school officials of a student's car for alcohol and drugs. Since the Alaska Constitution had not been addressed by the trial court, the Court of Appeals left for another day the constitutionality of the search under the Alaska Constitution. This case, therefore, would be an excellent vehicle for discussing the parameters of student rights under the Alaska Constitution. An earlier case, *D.R.C. v. State*, 646 P.2d 252 (Alaska App. 1982), contains another interesting example of a school search of a student. This case, however, should only be used for its facts, since its holding that public school teachers are not subject to constitutional limitations was later found to be incorrect, based upon the United States Supreme Court's decision in *New Jersey v. T.L.O.*, 469 U.S. 325, 83 L.Ed.2d 720, 105 S.Ct. 733 (1985) [*See, Lowry v. State*, 707 P.2d 280 (Alaska App. 1985)]. *New Jersey v. T.L.O.* is another good case to look at for facts to set up a student rights lesson. Edited copies of the Alaska decisions in both *Shamberg v. State* and *D.R.C. v. State* are attached.

STEVE COWPER DEFENDS LONG HAIRS

Who is Stephen C. Cowper? Whose side did he take in this case?

Who was Michael Breese and why was he expelled from school?

Why did he think that he had a right to stay in school?

Who supported him and why?

Who thought that Michael should be expelled? Why?

When courts have to make decisions, they often have to try to balance two competing goals. What were the two goals in this case?

To what parts of the Alaska Constitution did the Alaska Supreme Court look to solve this problem?

What decision did the court make in this case?

Listed below, you will find eight reasons used by the Alaska Supreme Court to support its decision in Michael Breese's case. Divide the reasons into two lists. One list will contain those reasons which support a student's fundamental rights. The other list will contain those reasons that support the need for a school to maintain order and keep rules.

1. Hairstyles have traditionally been left to personal decision. They have been the subject of great variety and individual taste.

2. Long hair causes distractions and disruptions within the school system.

3. Students, like adults, have the right to be let alone.

4. Especially in Alaska, we believe in the preservation of maximum individual choice, the protection of minority sentiments, and the appreciation of divergent lifestyles.

5. Our government is one of limited powers.

6. Government should not be able to control the personal appearance of private citizens.

7. Good grooming improves personal behavior.

8. Children are possessed with fundamental rights under the Alaska Constitution.

9. Personal freedoms are not absolute; they must yield when they intrude upon the freedom of others.

10. Government control of the physical appearance of private citizens, young and old, is contrary to a free society.

11. The student with long hair has a poor self-image, and is therefore negative, defensive, and in trouble.

Russell BREESE, Father and next friend of Michael Breese, a minor, Appellant,
v.
Elmer C. SMITH, Principal, Main Junior High School, George E. Taylor, Superintendent, Fairbanks North Star Borough School District, et al., Appellees.
No. 1614.

Supreme Court of Alaska.
Sept. 11, 1972.

Before BONEY, C. J., RABINOWITZ, CONNOR and ERWIN, JJ., and VICTOR D. CARLSON, Superior Court Judge.

OPINION

RABINOWITZ, Justice.

This appeal requires that we resolve a hair length controversy arising from the enforcement of a junior high school grooming regulation. If the regulation in the case at bar is upheld, the student will be denied a public education unless he conforms his hair style to the regulation's standards.

Michael Breese enrolled in the seventh grade class at Main Junior High School in Fairbanks on September 13, 1971, shortly after the fall term had begun. Some three years prior thereto, Elmer C. Smith, principal of Main, had promulgated an unwritten hair regulation which required that male students' "hair must not be down over the ears, over the eyes, . . . [or] over the collar."

From the date of his enrollment, the length of Breese's hair violated the school regulation. School officials immediately informed Breese that his hair length was out of conformity with the rule and that his hair would have to be cut. With the knowledge and support of his father, Breese refused to cut his hair to the school standards. Smith suspended Breese from Main on September 21, 1971. Thereafter, Smith recommended to the School Board, Fairbanks North Star Borough School District, that Breese be expelled for wilful disobedience of the hair regulation.[1]

On September 22, 1971, an action in Breese's behalf was commenced in superior court seeking injunctive relief. Five days later, the superior court issued an ex parte temporary restraining order enjoining Smith and the Superintendent of Schools of the Fairbanks North Star Borough School District from denying Breese permission to attend classes until a hearing could be held on Breese's application for a preliminary injunction.

On the evening of October 7, 1971, the School Board convened and held a hearing to consider Smith's recommendation that Breese be expelled. After hearing Smith's testimony and other witnesses called by Smith, no testimony having been adduced in Breese's behalf, the Board accepted the recommendation, and expelled Breese on the following day. Thereafter a hearing on the merits of Breese's application for

preliminary injunction was held in the superior court on October 15, 1971.[2] The parties produced conflicting evidence concerning the effects of Breese's hair, the effects of long hair generally, and the causal relationships between long hair, disruptive behavior, and academic performance. The superior court subsequently entered a memorandum opinion and order in which it found the school's hair regulation reasonable, entered judgment against Breese, and dissolved the outstanding temporary restraining order. Breese now appeals the decision of the superior court.[3]

The United States Supreme Court has not yet passed on the question of whether a student's personal appearance is constitutionally protected. In the landmark case of Tinker v. Des Moines Independent

Community School District,[12] wherein the Supreme Court of the United States held that junior high school students had a right under the first amendment to wear black armbands in school in order to dramatize their opposition to the Vietnam war, the question of hair styles was expressly distinguished. In that case, the Court stated:

> The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment.[13]

Since *Tinker*, the Supreme Court has consistently declined to consider the matter of school hair regulations and dress code.

The question of personal appearances in public classrooms is one of the liveliest of current constitutional issues, and the aftermath of *Tinker* has witnessed a great proliferation of student-initiated suits in this area.

Two provisions of Alaska's constitution are relevant in the instant case. First, article I, section 1 affirms that all persons in the state of Alaska are granted certain inherent and natural rights. More precisely, that section states:

> This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

The second relevant provision is article VII, section 1, which guarantees all children of Alaska a right to public education. This section of Alaska's constitution provides:

> The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. . . .

[4] While some of the terms of article 1, section 1 parallel the language of various federal constitutional provisions,[29] we have repeatedly held that this court is not obliged to interpret our constitution in the same manner as the Supreme Court of the United States has construed parallel provisions of the federal Constitution.[30] Thus, in the case at bar, although sound analysis requires that we look to the various federal precedents that have interpreted provisions of the federal constitution that parallel Alaska's constitution, we are not necessarily limited by those precedents in expounding upon Alaska's constitution.

[5] Given this backdrop of constitutional interpretation we begin with the established premise that children are possessed of fundamental rights under the Alaska constitution.[31] Moreover, we have previously stated that children's constitutional rights will not be denied in deference to governmental benevolence or popular social theories.[32] Our decisions in RLR v. State [33] and other cases involving constitutional rights of children are in accord with the United States Supreme Court's statement in *Tinker* that:

> Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.[34]

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[29] *Compare* the following language of the due process clause of the fourteenth amendment, which provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

and the due process clause of the fifth amendment which provides:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .

with the language of the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. . . .

[30] Specifically in Roberts v. State, 458 P.2d 340 (Alaska 1969), this court said:

> [W]e are not limited by decisions of the United States Supreme Court or the United States Constitution when we expound our state constitution; the Alaska Constitution may have broader safeguards than the minimum federal standards. 458 P.2d at 342–343 (footnote omitted).

[32] In RLR v. State, 487 P.2d 27 (Alaska 1971), we noted:

> If an honest analysis of constitutional requirements leads us to believe that they apply to children, we lack authority to withhold their application in deference to a popular social theory. 487 P.2d at 31 (footnote omitted).

[34] 393 U.S. at 511, 89 S.Ct. at 739, 21 L.Ed.2d at 740. We note that children have also been accorded constitutional status under the federal Constitution by the United States Supreme Court. Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969).

We further cite with approval Judge James E. Doyle's observation:

> Cautious counsel to avoid judicial involvement in serious constitutional issues merely because they concern younger people, in my view, is neither prudent, expedient, or just. It is time to broaden the constitutional community by including within its protections young people whose claim to dignity matches that of their elders. Breen v. Kahl, 296 F.Supp. 702, 706 (W.D.Wis.1969).

[6] We hold that under article I, section 1 of the Alaska constitution's affirmative grant to all persons of the natural right to "liberty," students attending public educational institutions in Alaska possess a constitutional right to wear their hair in accordance with their personal tastes. In reaching this conclusion, we are cognizant of the fact that the term "liberty" is an illusive concept, incapable of definitive, comprehensive explication. Yet at the core of this concept is the notion of total personal immunity from governmental control: the right "to be let alone."[35] In 1891, the Supreme Court of the United States embraced Judge Cooley's famous definition of "liberty":

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by *Judge* Cooley, "The right to one's person may be said to be a right of complete immunity: to be let alone." (emphasis in the original).[36]

More recently the First Circuit in Richards v. Thurston,[37] held that the right of students to determine their personal appearance is implicit in the liberty assurance of the due process clause. There the court said:

> We do not say that the governance of the length and style of one's hair is necessarily so fundamental as those substantive rights already found implicit in the "liberty" assurance of the Due Process Clause, requiring a "compelling" showing by the state before it may be impaired. Yet "liberty" seems to us an incomplete protection if it encompasses only the right to do momentous acts, leaving the state free to interfere with those personal aspects of our lives which have no direct bearing on the ability of others to enjoy their liberty. . . .[38]

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[36] Union Pacific Ry. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734, 737 (1891). Justice Douglas amplified this interpretation of "liberty" in Olff v. East Side Union High School Dist., 404 U.S. 1042, 1144, 92 S.Ct. 703, 704–705, 30 L.Ed.2d 736, 737 (1972):

> The word "liberty" is not defined in the Constitution. But . . . it includes at least the fundamental rights "retained by the people" . . . .
>
> One's hair style, like one's taste for food, or one's liking for certain kinds of music, art, reading, recreation, is certainly fundamental in our constitutional scheme—a scheme designed to keep government off the backs of people.

[38] *Id.* at 1284–1285. The court went on to make the following observation:

> We think the Founding Fathers understood themselves to have limited the government's power to intrude into this sphere of personal liberty, by reserving some powers to the people. The debate concerning the First Amendment is illuminating. The specification of the right of assembly was deemed mere surplusage by some, on the grounds that the government had no more power to restrict assembly than it did to tell a man to wear a hat or when to get up in the morning. The response by Page of Virginia pointed out that even those "trivial" rights had been known to have been impaired—to the Colonists' consternation—but that the right of assembly ought to be specified since it was so basic to other rights. The Founding Fathers wrote an amendment for speech and assembly; even they did not deem it necessary to write an amendment for personal appearance. We conclude that within the commodious concept of liberty, embracing freedoms great and small, is the right to wear one's hair as he wishes. 424 F.2d at 1285 (citations omitted).

Similarly, the Third Circuit reached the same conclusion in Stull v. School Board of Western Beaver Jr.-Sr. H.S.[39]

> . . . However, it is our view that the First Circuit's approach [in Richards v. Thurston] was correct; we therefore prefer to follow it and hold that the governance of the length and style of one's hair is implicit in the liberty assurance of the Due Process Clause of the Fourteenth Amendment.[40]

Hairstyles have been the subject of great variety and individual taste and have traditionally been left to personal decision; they are the manifestations of our diverse and numerous individual personalities.[41] The United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles. The spectre of governmental control of the physical appearances of private citizens, young and old, is antithetical to a free society, contrary to our notions of a government of limited powers, and repugnant to the concept of personal liberty. It has been observed that "[t]here are few things more personal than one's body and its appearance, and there could be few laws more destructive of the notion that there is a range of decisionmaking within which the individual is autonomous than a rule regulating physical makeup."[42] Whatever else "liberty" may mean as used in article I, section 1 of the Alaska constitution, we hold that the term at least encompasses the fundamental personal right of students in our public schools to select their own individual hair styles without governmental direction.[43]

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[41] In Richards v. Thurston, 304 F.Supp. 449, 451 (1969) Judge Wyzanski noted the following:

> This Court takes judicial notice that hairstyles have altered from time to time throughout the ages. Sampson's locks symbolically signified his virility. Many of the Founding Fathers of this country wore wigs. President Lincoln grew a beard at the suggestion of a juvenile female admirer.. Chief Justice Hughes' beard furnished the model for the frieze over the portico of the Supreme Court of the United States proclaiming "equal justice under law." Today many of both the younger and the older generations have avoided the increased cost of barbering by allowing their locks or burnsides to grow to greater lengths than when a haircut cost a quarter of a dollar.
>
> Whether hair styles be regarded as evidence of conformity or of individuality, they are one of the most visible examples of personality. This is what every woman has always known. And so have many men, without the aid of an anthropologist, behavioral scientist psychiatrist, or practitioner of any of the fine arts or black arts.

[42] 84 Harv.L.Rev. 1702, 1711 (1971). In his dissent in Ferrell v. Dallas Indep. School Dist., 393 U.S. 856, 89 S.Ct. 98, 21 L.Ed.2d 125, denying cert. to 392 F.2d 697 (5th Cir. 1968) Justice Douglas wrote:

> I suppose that a nation bent on turning out robots might insist that every male have a crew cut and every female wear pigtails. But the ideas of "life, liberty, and the pursuit of happiness," expressed in the Declaration of Independence, later found specific definition in the Constitution itself, including of course freedom of expression and a wide zone of privacy. I had supposed those guarantees permitted idiosyncrasies to flourish, especially when they concern the image of one's personality and his philosophy toward government and his fellow men.

[43] In interpreting our constitution as we do today, we are merely fulfilling our judicial obligation enunciated in Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970):

> . . . [W]e are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. 471 P.2d at 402 (footnote omitted.)

[7] While we have concluded that the right of students to fashion their own appearances by wearing their hair in accordance with their own individual preference in public schools is a fundamental constitutional right implicit in the concept of liberty as guaranteed by the constitution of Alaska, we do not hold that such right is absolute.[44] There may be instances in which the state acting through a school administration would be justified in regulating the hair length of its citizenry. We are in accord with the observation made by the court in Bishop v. Colaw [45] that "personal freedoms are not absolute; they must yield when they intrude upon the freedom of others." [46]

Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgment in question was justified by a compelling governmental interest.

[11–13] Breese established the existence of a fundamental constitutional right and the encroachment thereof by the school hair regulation. We hold that on this record, Smith and the School Board have failed to prove that their interest in promulgating the hair length regulation is compelling.[56] In their attempt to justify the rule, Smith and the School Board produced lay opinion testimony, unsupported by figures or statistics, on the relationships between long hair and disruptive behavior and between long hair and academic performance. That testimony included a few references to specific disturbances involving students with long hair. Absent from the appellee's proof, however, were "hard facts" [57] pertaining to the causal relationship between appearance and behavior. No empirical studies were offered. No testimony from experts such as psychologists or psychiatrists was introduced.

Instead, Smith testified that his primary objection to long hair being worn by male students was that it was a deviation from the norm of appearances and caused distractions and disruptions within the school system. He further testified that he believed that good grooming improves personal behavior, that the student with long hair has a poor self-image and consequently his personal behavior is not what it could be, that the long haired student is negative, defensive and in trouble, and that there is a very direct relationship between personal appearance and behavior. Smith

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[44] The Eighth Circuit observed in part in Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971) that:

> Of the justifications advanced by the school administrators in support of the regulations, only those relating to swimming pool sanitation and shop class safety bear any rational relation to the length of a student's hair. The school administration has failed to show why these particular problems cannot be solved by imposing less restrictive rules, such as requiring students to wear swimming caps or shop caps. 450 F.2d at 1077.

We are also in agreement with Smith's and the School Board's position that:

> Students cannot be permitted to attend class with contagious diseases, armed with dangerous weapons, or unclothed. Neither can they be permitted to speak at will.

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also testified that university students with long hair had caused an "excitement" when they visited his school, that he was informed of an instance in which a classroom fight between two boys broke out after one called the other a "pretty boy," and that he had overheard students who were observing Breese in the hallway say, "isn't he cute" and laugh. A mathematics teacher from Main testified in defendants' behalf and stated that on one occasion, Breese had caused a minor disruption in her class when he got his hair caught in the pins on her bulletin board. The assistant principal of Main testified that in his professional opinion, long haired students are proportionately more of a disciplinary problem than short haired students. He further stated that he believed the long hair of a student could cause a disruption, could become a disciplinary problem. A counselor at Main testified that two boys in her room had caused a disruption by saying that "my hair is longer than yours" and by pulling on each other's hair and fighting. Another counselor from Main, who was also a priest and possessed considerable teaching and administrative experience, testified that when he was a principal at another high school, he experienced more disciplinary problems with students on "hobo day," a special occasion on which the school dress code was relaxed and students were allowed to wear old clothes. He later admitted, however, that the increased unruly behavior on "hobo day" might have been a function of the holiday atmosphere. He further testified that in his professional opinion, there could be a relationship between long hair and behavior and disciplinary problems. An English teacher at Main testified that the title of the play *Hair* perhaps has some relationship with an attitude of protest, that long hair on a student interferes with teaching by preventing "eye contact," and that a student who is constantly flipping his hair back or moving it back out of his eyes creates a distraction. Another English teacher from Main gave her opinion that students' long hair and their behavior "go together." A teacher testified that "I've had more combs in my classroom lately than I've seen in a chicken yard." Finally, a juvenile officer of the Fairbanks police department testified that probably more than half of the juvenile males with whom he came into contact had long hair. He acknowledged, however, that "contacts" and "juveniles" were not synonymous, and that the police department kept no figures, percentages or statistics on the length of hair of juvenile offenders.

This evidence offered by Smith and the School Board to justify the hair length regulation, however, was not uncontroverted. Breese offered both lay and expert opinion testimony that rebutted the evidence presented by appellees. Breese's father testified that he wanted his son to have long hair and that he believed his son had a right to wear long hair since the youth was not infringing anyone else's rights. A biology teacher from Lathrop High School testifying in Breese's behalf stated that long haired students did not cause discipline problems, and that they were among the academically superior students who took his advanced biology course. A social studies teacher from Lathrop testified that she could not tell any difference between long and short haired students in deportment, grades, attitude or anything. She further testified that long haired males in her classes did not cause distractions or create disruptions but opined that crew cut males might create a disturbance. A current events and "American Minorities" teacher from Lathrop testified that she could not see any difference in behavior between the male students in her classes with long hair and those with short hair, and that she did not tend to have more long haired people in her special classes for "underachievers." A French and social studies teacher from Ryan Junior High gave testimony that she could see no relationship at all between her students' long hair and their behavior. She further testified that the length of a male student's hair had never led to distractions in her class, that long haired students were no better or worse achievers than short haired students, and that long haired students did not give her any more trouble than short haired students. A psychologist who worked in a Fairbanks mental clinic for five years gave her expert opinion that there was no cause and effect relationship between the length of hair and the behavior problems of a child, and that short haired and long haired kids got into trouble with equal frequency. She also testified that her own son, a high school student who wore long hair, was a semi-finalist in the national merit scholarship competition. An assistant professor of education at the University of Alaska, who is a registered psychologist in the state of Alaska, gave his expert opinion that there is no direct causal relationship between hair length and behavior. He further testified that in no case could he actually correlate, let alone find a causative relationship between hair length and personality. Finally, a seventh grade student from Main testified that in the class she shared with Breese, the latter's hair created no distractions and caused no disruptions or talk.

We express no view as to the nature or exact amount of evidence necessary to establish the existence of a compelling state interest. Rather, we conclude only that on the basis of the entire record in the case at bar, Smith and the School Board did not meet the requisite burden of showing a compelling justification for the Main Junior High School hair length regulation. In the absence of any compelling justification, we hold that the school hair length regulation impermissably infringed upon Breese's constitutional right under Alaska's constitution which guaranteed him the liberty of personal choice as to appearance.

ERWIN, Justice (concurring).

I regret that I am forced to dissent from the reasoning expressed even though I agree with the result in this case. "I have no objection, dislike or distaste for any particular hair style worn by either male or female of any age. My acceptance of the hair styling of other human beings is tempered by my thinking that whatever the style it should be clean, reasonably neat (whatever that means, and present no danger to the health or safety of the individual or to others."[1] In the case at hand, there appears to be no question but that the hair in question was clean, neat and presented no danger to the health or safety of Breese or anyone else.

But the length or style of Michael Breese's hair is not the issue here. It is rather the nature and scope of the power of the school board—more precisely, the limits of that power.

The American community groups together in its schools hundreds, even thousands, of energetic, volatile and sometimes aggressive young people in close contact with one another and in confined areas, during a substantial part of each school day for three-fourths of each year and twelve years of their lives.

The bare process of teaching them in the traditional sense demands the best that the profession can offer. But in addition we call upon the schools to give our children driver training, vocational skills, public speaking, music instruction, and sex education, and to maintain their physical fitness, to carry on ever broadening athletic programs, engage in fund raising, and plan, produce and chaperone social events.

Citizens expect and demand that their children be physically safe in the schools to whose supervision they are consigned, and the citizenry is outraged if the schools are less than safe and orderly. At the same time we expect that the requirements of order, and of protection and implementation of the educational program of the school, will be met by limited enforcement means—the force of the school establishment itself and the school-related disciplines of reprimand, suspension, and expulsion—recognizing that the schoolroom is an inappropriate place for the policeman to be, whether called or needed.

Just as we do not expect parents to be perfect, recognizing that a certain amount of trial and error is necessary for the development of both the parents and the child, we cannot rationally demand perfection from the school. Each year, as the makeup of a school class changes, the same trial and error process is necessary to establish an atmosphere for teaching. The initial guidelines provide a basic starting point for teachers and students alike to assess each other and to establish a working relationship. In measuring the appropriateness and reasonableness of school regulations against constitutional protections, the courts must give full credence to the role and purposes of the schools and of the tools with which they must deal with their problems. The courts must be careful to recognize the differences between what are reasonable restraints in the classroom and what are reasonable restraints on the street corner. This is not to say, however, that there are no limits to board authority. Indeed, there must be (just as there must be limits on parental authority).

The majority opinion balances these interests by placing the burden of a school board of justifying each regulation which restricts any constitutional right of a student to establish a "compelling state interest" before the regulation will be upheld. I feel that the majority has placed the wrong burden on the wrong party. I view of the nature and function of the school board in the present day educational process, I am strongly of the opinion that it is the student who should bear the burden of showing that a particular rule bore no reasonable relationship to the purpose for which it was promulgated. This reasonable relationship "must be an obvious and real connection between the regulation and its purpose. . . . "[4]

The effect of the majority opinion is to tightly constrict board authority at a time when citizens are demanding more from the school. This could bring the educational process to a ponderous halt:

> "Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.[5]

This court is in a difficult position to judge the needs of local school districts scattered over the reaches of Alaska. Their problems are as diverse as the inhabitants and the climate. Innovation and experimentation have been the order of the day as local schools met local problems. I fear the perfection we now require will greatly limit this at a time when we most need new ideas and approaches to solve our basic problems. The board may spend its time repetitively justifying its legitimate authority rather than solving its problems.

However, the application of a burden such as I have proposed would not have changed the result in the case at bar. The school board, in its arguments both below and on appeal, *limited* its justification of the instant rule to a claim that the regulation of hair length was conducive to good academic performance and deportment.[6] Highly qualified expert testimony brought forth by appellant was unanimous in denying that there was any "obvious and real connection" between the length of hair and academic performance or deportment. We have not been cited to nor have we found any medical authority which refutes this testimony.[7] It is on this very narrow basis that I concur in this case.

Brent C. SHAMBERG, Appellant,

v.

STATE of Alaska, Appellee.

No. A-2212.

Court of Appeals of Alaska.

Oct. 14, 1988.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

SINGLETON, Judge.

A grand jury indicted Brent C. Shamberg on May 13, 1987, on one count of misconduct involving a controlled substance in the third degree, AS 11.71.030(a)(3), and one count of minor consuming alcohol, AS 04.-16.050. The charge of misconduct involving a controlled substance was based on two grams of cocaine found in the ashtray of Shamberg's car while it was parked on the grounds of Service High School in Anchorage. Superior Court Judge Mark C. Rowland held an evidentiary hearing and denied Shamberg's motion to suppress the evidence of the cocaine. Shamberg entered pleas of no contest to both counts, reserving his right to appeal the denial of the motion to suppress. *See Cooksey v. State*, 524 P.2d 1251 (Alaska 1974). Shamberg now appeals the denial of his motion to suppress the cocaine. We affirm.

FACTS

On April 7, 1987, Chris Hooten, the assistant principal in charge of discipline at Service High School, informed Matthew Nolan, the "safety/security home-school coordinator" for Service High School, that a teacher in the high school library had informed him of a problem within the library. Specifically, the teacher believed that a student was under the influence of alcohol. Nolan proceeded to the library, where the teacher pointed out Brent Shamberg to him. Nolan asked Shamberg to come to a small storeroom with him so he could talk to him. He noticed that Shamberg's eyes were glassy and his face was flushed. As they walked to the storeroom, he observed Shamberg bouncing into large objects and swaying as he walked. After they were in the storeroom, Nolan detected an odor of alcohol on Shamberg and also noticed that Shamberg's speech was slightly slurred.

Nolan told Shamberg that he believed he had been drinking and wanted to know where Shamberg had gone for lunch. According to Nolan, Shamberg was evasive regarding his whereabouts during the lunch period. He would not state who he was with, and was equivocal in his responses to Nolan's inquires as to whether he drove his car. When Shamberg refused to turn over his keys to Nolan, Nolan contacted Hooten, the assistant principal. Shamberg surrendered his car keys to Hooten and all three of them proceeded to Hooten's office. In Hooten's office, Nolan told Shamberg that they knew he had been drinking and that they wanted to search his car. Nolan handed Shamberg a consent form and told him to sign it. After some discussion, Shamberg signed the form, indicating that he consented.

Shamberg, Hooten, and Nolan then went outside to Shamberg's car, which was parked improperly in the driveway of the west parking lot. Hooten gave Nolan the keys, and Nolan proceeded to search the car. He searched under the seats, under the dashboard, in the glove compartment, and in the ashtray. He found two baggies, both containing a white powdery substance, in the ashtray. Shamberg appeared distressed, and indicated that the bags contained cocaine. Chemical tests subsequently showed that the substance was cocaine.

Shamberg filed a motion to suppress evidence of the cocaine, arguing that the consent was not voluntary and that the search violated Shamberg's constitutional rights under *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Judge Rowland held an evidentiary hearing, at which Nolan testified to the facts presented here. He also testified that he felt that Shamberg was under the influence of more than just alcohol because he did not believe that Shamberg could have consumed enough alcohol to "stagger around

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and bump into things and this sort of thing" in the forty-minute lunch period.

Judge Rowland found that Shamberg had not given his consent freely and voluntarily. Therefore, the consent form did not justify the search. Nevertheless, Judge Rowland found that the search was justified under the test set forth in *T.L.O.* He found that the search was justified at its inception because of the defendant's state of intoxication and because the defendant's automobile was improperly parked on school grounds. He also considered the school's responsibility to secure evidence, to enforce school rules, and to protect other students. Judge Rowland further found that the search was reasonably related in scope to the circumstances which initially justified the search. He reasoned that Nolan had a right to search the vehicle for alcohol and for other intoxicating substances, including cocaine, which may have contributed to Shamberg's state of intoxication. Therefore, he found that the search was justified at its inception and was not beyond the scope of the original justification, as required under *T.L.O.*

DISCUSSION

In *T.L.O.*, the United States Supreme Court addressed the application of the fourth amendment to a search of a student's purse by an assistant principal. A teacher had discovered the student smoking cigarettes in the girls' restroom, in violation of a school rule. The student denied smoking, and the vice principal demanded that she open her purse. He found a pack of cigarettes and noticed a pack of rolling papers in the purse. Suspecting that the rolling papers were for the use of marijuana, the vice principal proceeded to thoroughly search the purse. 469 U.S. at 328, 105 S.Ct. at 735. He found marijuana, a pipe, empty plastic bags, a list of students who owed the student money, two letters implying that she sold marijuana, and a large number of one dollar bills. *Id.*

The Court held that the fourth amendment applied to school officials, but that the search did not violate the fourth amendment. In a plurality opinion authored by Justice White, the Court formulated a two-prong test to apply the fourth amendment to searches by school officials. Rejecting the need for a warrant or probable cause to search a student, the Court held that a search need only be reasonable. To satisfy the reasonableness requirement, the search must be "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 341–42, 105 S.Ct. at 742–43 (quoting *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968)). The Court stated that:

> Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires "balancing the need to search against the invasion which the search entails." On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of the public order.

469 U.S. at 337, 105 S.Ct. at 740 (citation omitted).

The plurality recognized that students do have legitimate expectations of privacy, which must be balanced against "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds." *Id.* at 339, 105 S.Ct. at 741. It noted that the first prong, whether the search was justified at its inception, is satisfied if the school teacher or official has "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[1] *Id.* at 341–42, 105 S.Ct. at 742–

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[1] Justice Stevens, in a dissenting opinion joined by Justice Marshall and in part by Justice Brennan, criticized the plurality's standard for determining whether a search is justified at its inception because such a standard allows school officials to search students for trivial infractions of

43. It further noted that the measures adopted should be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.*

The Colorado Supreme Court has applied the *T.L.O.* standard to a search of a student's car on school grounds by a school security officer. The court upheld a search for marijuana in a student's trunk, reversing the trial court's determination that the probable cause standard applied. *In re P.E.A.*, 754 P.2d 382 (Colo.1988). The search was predicated by a police officer's report to the high school principal that a minor had informed the officer that two students, F.M. and M.M., had prepared marijuana for sale that day in the high school. The principal questioned and searched the named students and inquired how they got to school. One student responded that P.E.A. had driven the other student to school. The principal and school security officer thereafter searched and questioned P.E.A., who eventually admitted to driving to school that morning. The school officials then proceeded to P.E.A.'s car with him to search it. On the way to the car, the security officer asked P.E.A. if there were any illegal substances in his car. P.E.A. admitted that there were, but claimed that the illegal substances belonged to F.M. The security officer found marijuana in the car, and a large duffel bag of marijuana in the trunk. During this entire scenario, the police officer remained at the school but did not participate in the questioning or search.

The trial court found that the evidence of marijuana should be suppressed because the search was not supported by reasonable suspicion as there was no consent to the search, and because the security officer and principal were acting as agents of the police when they questioned P.E.A. and searched his car.

The Colorado Supreme Court rejected the trial court's finding that the search was not justified under *T.L.O.*, although it recognized that the reasonable suspicion standard applied in *T.L.O.* required more than a "hunch of criminal activity." *Id.* at 388 (quoting *People v. Wells*, 676 P.2d 698, 701 (Colo.1984)). The court compared the factual situation to an investigative stop, for which a reasonable suspicion of criminal activity is also required to justify a search. It pointed out that grounds for a more intensive search may develop after the initial investigatory stop. *Id.* *See Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *People v. Cagle*, 688 P.2d 718 (Colo.1984). The court, therefore, reasoned that because the initial questioning of F.M. and M.M. was justified by the informant's report, the grounds to search P.E.A. could be based on the results of that questioning. *P.E.A.*, 754 P.2d at 389. *See* W. LaFave, *Search and Seizure* § 10.11(b) at 174–75 (1987) (product of initial search provided justification for further search in *T.L.O.*). The court also considered P.E.A.'s admission en route to the car in evaluating the reasonableness of the search. Thus, the court found that, based on all the evidence known to them at the time of the search, the school officials had a reasonable suspicion that there was marijuana in P.E.A.'s car. 754 P.2d at 389.

The court held that the second prong of *T.L.O.* was met because the search was reasonable in relation to the gravity of the state interest in controlling drug use in the

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school rules. 469 U.S. at 377, 105 S.Ct. at 762. Stevens proposed a standard which would allow searches only when school officials have "reason to believe that the search will uncover *evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process.*" *Id.* at 378, 105 S.Ct. at 762. He posited that the logic of this distinction is "almost too clear for argument." *Id.* at 380, 105 S.Ct. at 763. Although the plurality stated that "the nature of the infraction" must be considered in the balancing process, Stevens noted that the nature of the infraction here, smoking in the girls' room, was not considered in the analysis. In Shamberg's case, the violation would meet Stevens' standard, as well as the plurality's, inasmuch as alcohol consumption by a minor and possession of cocaine are criminal violations and Shamberg's presence in a school building in an intoxicated condition could be found to be seriously disruptive of school order or the educational process.

school. The court found that the suspicion that the marijuana was to be sold to high school students justified the intrusiveness of the search of P.E.A.'s person, locker, and car. *Id.* Thus, the search was not barred by the fourth amendment under *T.L.O.*

The California Supreme Court has also applied *T.L.O.*, holding that a principal did not have a reasonable suspicion to search a student after the principal observed the student attempt to conceal a calculator case as he approached the student. *In re William G.*, 40 Cal.3d 550, 221 Cal.Rptr. 118, 709 P.2d 1287 (1985). The principal approached the student to ask him why he was not in class, and asked him what he had in his hand. The student replied, "nothing." The principal brought the student to his office and eventually, after forcing the case away from the student, found marijuana in it. He called the police, and the student was arrested. The juvenile court denied his motion to suppress the evidence. The California Supreme Court rejected the defendant's contention that a probable cause standard should apply to searches by a principal, and instead applied the standard enunciated in *T.L.O.* The court found that the student's "furtive gestures" in attempting to hide the calculator case did not provide sufficient cause to search under this standard.

The question of whether the search of Shamberg's ashtray was reasonable is a mixed question of law and fact. We review the trial court's factual findings to determine if they were clearly erroneous. *State v. Ridgely*, 732 P.2d 550, 554 (Alaska 1987). We then review the entire record and make an independent determination of whether the search was reasonable. *Id.*

[1] The evidence presented to Judge Rowland indicated that when Shamberg was first observed by school officials, he was extremely intoxicated. His speech was slurred, his eyes were glassy, and he could not maintain his balance. In addition, the evidence showed that Shamberg's car was improperly parked on school grounds and that he was evasive about whether he had driven his car during the preceding lunch hour. Judge Rowland had sufficient evidence to find that Shamberg was intoxicated and had arrived at the school in his car in that condition.

In *T.L.O.*, the Supreme Court cautioned that the "requirement of reasonable suspicion is not a requirement of absolute certainty." *T.L.O.*, 469 U.S. at 346, 105 S.Ct. at 745. Neither is it "an 'inchoate and unparticularized suspicion or "hunch."' " *Id.* (quoting *Terry v. Ohio*, 392 U.S. at 27, 88 S.Ct. at 1883). It is instead a " 'common-sense conclusio[n] about human behavior' upon which 'practical people'—including government officials—are entitled to rely." *Id.*

Unlike the principal in *William G.*, Nolan did have "knowledge or information" linking Shamberg to the use or possession of contraband. Nolan knew that Shamberg was under the influence of some intoxicant. The evidence of improper parking, Shamberg's intoxication, and Shamberg's evasive responses regarding his car could lead Nolan to the "common-sense conclusion" that Shamberg had been consuming or transporting alcohol or drugs in his car. Therefore, Judge Rowland did not err in concluding that Nolan had a reasonable suspicion to search Shamberg for drugs or alcohol.

[2] The next question is whether the reasonable suspicion justified a search of Shamberg's ashtray. Shamberg argues that there was no justification for searching his ashtray because, although Nolan had reason to believe he was under the influence of alcohol, Nolan did not have reason to believe that he was in possession of drugs. Because an alcohol container would not fit into an ashtray, he argues that the justification for the search does not extend to the ashtray. Nolan testified, however, that he suspected that Shamberg may have been under the influence of other drugs in addition to alcohol. The basis for his suspicion was the degree of Shamberg's impairment and the short length of the lunch period. He did not believe that Shamberg could have ingested enough alcohol in forty minutes to reach that level of intoxication. Judge Rowland found that

Nolan's suspicion was well founded, and that Nolan was authorized to search for illegal drugs as well as for alcohol. The evidence of Shamberg's drug or alcohol use supported a reasonable suspicion that the ashtray was the repository for drugs. Judge Rowland did not err in concluding that the scope of the search extended to the ashtray.

[3] Shamberg also argues, for the first time on appeal, that the search by a school security officer violated his constitutional rights under the Alaska Constitution. Alaska Const. art. 1, §§ 14, 22. He argues that a more stringent standard should apply to searches by school security officers under the Alaska Constitution than under the United States Constitution. We decline, however, to address the issue on this record. Shamberg's motion to suppress addressed only the *T.L.O.* standard. Therefore, the state presented its evidence to establish only that a reasonable suspicion existed to justify the search. Shamberg argues that Nolan was in reality a security officer rather than a teacher or school administrator. In Shamberg's view, security officers should be forbidden to search students and their vehicles, unless probable cause exists to believe that the student has committed a crime. Shamberg's failure to raise this issue in the trial court prevented a full development of the relevant facts regarding the conditions of Nolan's employment and the customary duties he performed. Under the circumstances, we find the argument forfeited.

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D. R. C., Appellant,
v.
STATE of Alaska, Appellee.
No. 4905.
Court of Appeals of Alaska.
June 11, 1982.

Before BRYNER, C. J., and COATS and SINGLETON, JJ.

OPINION

SINGLETON, Judge.

Norman Hiler, Walter Krieger and D.R.C. are students at Kenai Central High School. On February 19, 1979, Hiler and Krieger attended second-period gym classes. Hiler was in a class instructed by Coach Robert Boudreaux; Krieger was in a different teacher's class. The lockers in the boys' locker room were reserved for students who rented them or who participated on a school team. Hiler did not have a locker and therefore, after changing for his weightlifting class, hung his clothes on a hook on the wall. His wallet, which was in the back pocket of his trousers, contained approximately fifty-five dollars—consisting of two twenty-dollar bills and at least three five-dollar bills.

Because the Kenai High School had experienced quite a bit of theft in the locker rooms during gym classes, Coach Boudreaux's policy was to remain in the locker room until all the students had gone into the gym and to keep the locker room locked while classes were in progress. On February 19, Boudreaux waited until his entire class, including Hiler, had gone into the gym; then he locked the door to the outside hall. Boudreaux then inspected the entire area, checking for students, and found no one left in the locker room except Krieger. After asking Krieger, whom he knew, to make sure the gym door was locked before leaving for class, Boudreaux left. About this time, D.R.C., whom Krieger did not know, entered the locker room to use the lavatory. D.R.C. agreed to lock the door when he left and Krieger went to class. Krieger testified that he watched the front door during his class but did not see D.R.C. leave the locker room.

After his class, Hiler returned to the locker room, noticed that his money was missing, and notified Boudreaux who in turn confronted Krieger. Krieger mentioned seeing someone he later identified as D.R.C., but whose name he did not know, and he and Hiler were told by Boudreaux to find and bring D.R.C. to him. The two subsequently confronted D.R.C. in the hall and told him that he was wanted by Boudreaux; D.R.C. demurred and a scuffle ensued between D.R.C. and Hiler. The fight was broken up by two teachers who escorted Hiler and D.R.C. to the office of Gregory Daniels, the assistant principal. Daniels calmed the boys down and learned the reason for the fight from Hiler. Daniels then excused Hiler to another room and Boudreaux entered the office. D.R.C. was questioned about the missing money by Daniels and searched by Boudreaux, Daniels and Clark. Daniels and Boudreaux testified that D.R.C. consented to the search, but D.R.C. denied this assertion. Boudreaux patted down D.R.C., frisked his pockets and had him remove his outer coat which was then searched. Finally Boudreaux asked D.R.C. to remove his shoes. An amount of money similar in denominations to that described by Hiler was found in one of D.R.C.'s shoes. After the money was found the police were called.

Boudreaux and Daniels had conducted searches in the past, though never strip searches. According to Boudreaux, there was a school policy of working "very, very closely with the police in [a case of] theft or drugs," and if stolen goods or illegal drugs were found on a student the police were generally brought in. Daniels, before authorizing the search, knew that D.R.C. was "in the area" when the money was stolen, and was the suspected culprit. He discussed the matter with Boudreaux before they searched D.R.C. Furthermore, the school district's policy manual permitted school officials to search the students for "cause," such as weapons, drugs or stolen money.

LESSON PLAN 4

ALASKA COURT STRUCTURE

INTRODUCTION:

In one of my first classroom appearances, I was asked to teach how the federal and state courts were organized. My first thought was, "How boring!" My second thought was, "How boring!" My third thought was, "Why do students need to know this stuff, anyway?" As I considered the problem more, I began to realize that the way in which the American court system is organized is identical to how other parts of our society are organized. After a problem is identified, the first step in the court process is to make a complaint. In the federal system, the complaint is made to the local United States District Court. In Alaska, the complaint process normally begins in the district or superior court. If that complaint is not resolved satisfactorily, the person appeals the decision to the next higher authority. In the federal system, the first appeal normally goes to the United States Court of Appeals. In Alaska, criminal appeals go to the Alaska Court of Appeals, while civil appeals go to the Alaska Supreme Court. If an unsatisfactory response is received, another appeal is made to a higher authority. In the federal system, the next step is the United States Supreme Court, while in Alaska the next step in criminal cases is the Alaska Supreme Court. In some cases, litigants may seek review by the United States Supreme Court after a final decision by the Alaska courts. This process can be summarized as follows:

PROBLEM ---> COMPLAINT ---> APPEAL ---> APPEAL ---> ...

This is the exact same process which we use in handling problems facing us in our everyday lives, outside of the court system. We learn the process as we discover the structure of our families. If faced with a problem, a complaint is made to one of our parents (or someone else who has authority over us). If we don't like the answer, we appeal to the other parent. If we don't like that answer, we may try a grandparent. As we grow, we use the process elsewhere. If Jane buys a pair of new purple tennis shoes and they fall apart the next day, she has a problem. She makes a complaint to the salesperson. If unhappy with his response, she may appeal to the manager. If unhappy with her response, she may appeal further to the owner. Once the structure of the institution is discovered the same process of problem solving is used in both the judicial system and the systems we face in everyday life. If one understands structure, one will have taken a huge step in learning to solve problems.

In this lesson outline, the students will be able to draw a chart which shows a person with a problem, the person making a complaint to another, and two appeals from the other person's decision. The students will then be able to add to the chart new information regarding the relationship of the three levels of the federal and state judicial appeals systems. Finally, the students will be able to add to the chart another appeals system in the school or community. The end result is that the students will understand how the world about them is organized and how they can use this information to solve their own problems.

OBJECTIVES:

Students will be able to:

1. Diagram in correct order the four parts of the problem-solving process.

2. Identify and add to the diagram the three levels of the federal court system.

3. Identify and add to the diagram the three levels of the state court system.

4. Given a new problem, add to the diagram in correct order three steps for solving that problem.

5. Describe the relationship between the structure of the state and federal court systems on the one hand and the process for problem-solving on the other hand.

GRADE LEVEL: 7th to 12th grade

TIME TO COMPLETE: 1 1/2 hours

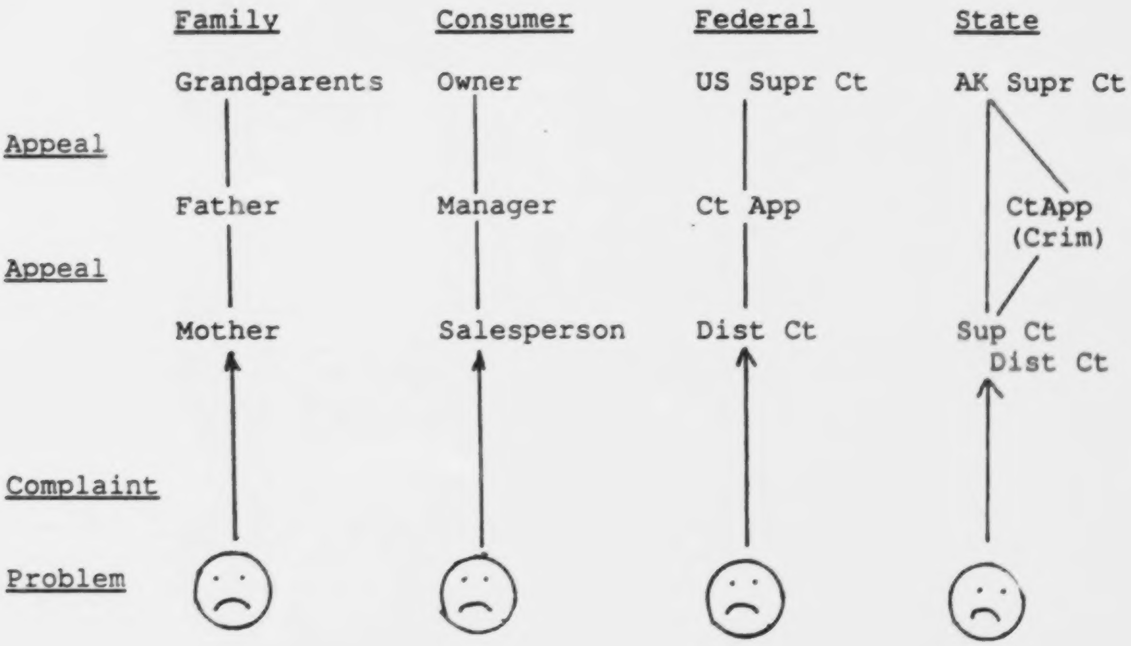
MATERIALS:

1. Butcher paper, 3 feet by 30 feet.

PROCEDURE:

1. Show and tell - have students bring to class broken items which they have bought, or problems which they are facing in their family or school.

2. Draw the underlined portions of the following chart on the extreme left hand side of a 30 feet long by 3 feet high piece of butcher paper before class begins.


Family
Consumer
Federal
State
Grandparents
Owner
US Supr Ct
AK Supr Ct
Appeal
Father
Manager
Ct App
CtApp (Crim)
Appeal
Mother
Salesperson
Dist Ct
Sup Ct
Dist Ct
Complaint
Problem

3. Help the students fill in the first two columns, using examples from their lives. Fill in the last two columns, discussing the roles of the different courts. Make sure the students copy the chart, since they will need to use it to complete their homework.

4. Divide the class into groups of three to find one other example of structure of which they have knowledge - ie, school, business, government bureaucracy. They should also list all agencies and businesses of which they do not know the structure. When done, have the students share with the whole class their findings. Add the known structures to the chart.

5. For homework, assign each group of three students to discover the structure of three agencies or businesses outside their school or family which are not known. They may work together and may use the suggestions shared in class. However, each student will be required to submit her own report. Each report should include a log of who she talked to, what the structure is, and a chart which integrates the new structure into the above chart completed in class.

6. The following day, have instructions already written on the board at the beginning of class asking students to fill in their findings on the chart.

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

2. Students must fulfill the requirement of writing their student report, including a log and completed chart.

LESSON PLAN 5

THE RIGHT TO A TRIAL BY JURY

INTRODUCTION:

One area in which the Alaska Constitution provides more rights to its citizens than does the United States Constitution is the right to jury trials in less serious criminal cases. Article III, section 2 and the Sixth Amendment provide that the trial of all crimes shall be by jury.

> The trial of all crimes, except in cases of impeachment, shall be by jury,... (Article III, section 2, United States Constitution)

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed,... (Sixth Amendment, United States Constitution)

A literal reading of these clauses would tell the reader that, as a matter of plain English, all offenses which can be regarded as criminal must be tried by jury if the defendant demands such a trial. But, as Humpty Dumpty told Alice,

> When I use a word, it means just what I choose it to mean, neither more nor less.

Despite this apparently plain language, federal courts have adhered to the position that, because certain offenses were not triable by jury at the time our nation was founded, the framers of our federal constitution did not mean to include such offenses as being triable by jury under the United States Constitution. Therefore, if the penalty does not exceed six months of imprisonment or a fine of $500, or both, there is generally no federal constitutional right to a jury trial.

The Alaska Constitution contains a similar guarantee to the right to trial by jury.

> In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury... (Article I, section 11, Alaska Constitution)

The Alaska courts have decided that this means what it says. The Alaska Constitution guarantees the right to a jury trial in any criminal prosecution. Criminal prosecutions are defined to include those prosecutions whose penalty may include a period of imprisonment, the loss of a valuable license (such as a fishing permit), or a fine so heavy that it indicates criminality. The Alaska Constitution's right to trial by jury extends well beyond the corresponding federal right.

The case to be studied in this lesson, *State v. Browder*, 486 P.2d 925 (Alaska 1971), discusses this right within an interesting factual context. On March 23, 1970, Richard F. Browder entered Judge Joseph Brewer's courtroom to find out how long his friends would be in court. He carried with him an unloaded shotgun, broken at the breach. The gun had been unloaded and broken earlier in the day at another courthouse at the direction of an Alaskan State Trooper. Mr. Browder did not want to leave the shotgun in his friend's truck because the truck could not be locked and he was afraid that the gun might be stolen. He approached his friends, who were sitting in the third row, and asked them how much longer they would be in court.

Judge Brewer saw a man enter his courtroom who was carrying a gun. The man had long hair and a beard, and was dressed in levis, boots, and a leather vest with "Brother" lettered across the back. It appeared to Judge Brewer that this man's breast pocket contained shells for the shotgun. This man was later identified as Mr. Browder. Judge Brewer had him arrested.

After hearing Mr. Browder's explanation, Judge Brewer found him in criminal contempt of court and immediately, without a jury trial, sentenced him to jail for six months, the maximum sentence.

Contempt means, among other things, disorderly conduct which tends to interrupt a judicial proceeding (A.S. 09.50.010). Under the Sixth Amendment to the United States Constitution, non-serious contempts (sentences up to six months in jail) need not be tried by a jury [*Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968)]. Under Article I, section 11 of the Alaska Constitution, an accused charged with an offense which may result in incarceration has the right to a trial by jury [*Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970)]. In *State v. Browder*, the Alaska Supreme Court decided that the Alaska Constitution guarantees an accused the right to jury trial for criminal contempt of court where imprisonment is a potential sanction.

OBJECTIVES:

Students will be able to:

1. List one provision of the United States Constitution and one provision of the Alaska Constitution which guarantee the right to trial by jury in criminal cases.

2. Identify one difference between how the United States and Alaska courts interpret similar jury trial guarantees.

3. Define contempt of court.

4. Identify the two players and their roles in *State v. Browder.*

5. Identify and list two arguments supporting Mr. Browder's position.

6. Identify and list two arguments supporting Judge Brewer's position.

7. Identify the two conflicting goals the court considered in reaching its decision in *State v. Browder.*

GRADE LEVEL: 11th and 12th grade

TIME TO COMPLETE: 3 hours

MATERIALS:

1. An edited version of the court's decision in *State v. Browder.*

2. The attached WORKSHEET FOR *State v. Browder* - PART I and WORKSHEET FOR *State v. Browder* - PART II.

PROCEDURE:

1. Open class with something outrageous. If it can be arranged, reenact the facts of *State v. Browder.* Allow disruption among students to help them understand the problem faced by Judge Brewer. Discuss the meaning of criminal contempt, comparing classroom disruption with courtroom disruption. (Note: An effective way to teach the doctrine of contempt is to manage the classroom like a

courtroom. At the beginning of the year, inform students of the doctrine of contempt and use contempt procedures to enforce classroom rules.)

2. Make a short presentation on the different federal and state jury trial rights. If possible, invite a local judge or magistrate into the classroom to discuss both the right to jury trial and contempt and to help the students work through the worksheets.

3. Distribute part I of the attached worksheet and the edited case of *State v. Browder*. Divide the students into groups of three to read through the case and to complete worksheet. Although each student will be required to complete her own worksheet, the students should work together to find the answers.

4. The following day, bring the students back together to agree on the issue in the case. Poll them on their decisions and list the reasons supporting their decisions in one of two columns, individual rights or the rights of the state.

5. Distribute part II of the attached worksheet for *State v. Browder.* Have the students return to their groups of three to discuss and work through the worksheet. After the students have completed the worksheet, bring the students back together to discuss the decision the court made, the reasons which support it, and how they reacted to the decision.

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

2. Students must fulfill the requirement of completing parts I and II of the worksheet.

WORKSHEET FOR *STATE V. BROWDER* - PART I

Facts

1. Who was Richard F. Browder? Describe his appearance?

2. Who was Joseph Brewer?

3. What did Mr. Browder take into the courtroom? Why did he take it into the courtroom?

4. How did Judge Brewer feel when he saw Mr. Browder?

5. What did Judge Brewer do to Mr. Browder?

6. Did Mr. Browder have a trial by jury?

7. What does Article I, section 11 of the Alaska Constitution say?

Issue

1. State the Constitutional question that the Alaska Supreme Court must answer.

2. In making a decision in this type of case, a court must balance the individual's right to procedural protections (a trial by jury) with considerations of necessity, efficiency, and the need to further respect for judges and courts. How would you decide this case? Why?

WORKSHEET FOR *STATE V. BROWDER* - PART II

Decision

1. What did the Alaska Supreme Court decide?

2. What reasons did the court give for its decision?

3. How will the decision affect the rights of individuals?

4. How will the decision affect the efficiency of the courts?

5. Jury trials cost a lot of money, which someday may come from taxpayer's pockets. Is the right to trial by jury in this case important enough that taxpayers (you someday) should have to pay for it? What about if the most a person could receive was ten days in jail (for example, for disorderly conduct)?

6. Do you agree with the court's decision? Why?

STATE of Alaska, Petitioner,
v.
Richard F. BROWDER, Respondent-Cross-Petitioner.
No. 1323.

Supreme Court of Alaska.
July 1, 1971.

Before BONEY, C. J., and DIMOND, RABINOWITZ, CONNOR, and ERWIN, JJ.

OPINION

RABINOWITZ, Justice.

On March 23, 1970, at approximately 3 p. m., Judge Joseph Brewer, while presiding over municipal arraignments in the Municipal Division of the District Court, requested the bailiff to bring Richard F. Browder into the courtroom. After Browder was brought in the courtroom, he was asked his name, whether he was the person who had entered the courtroom earlier with a shotgun, and if he had engaged in such conduct what explanation, if any, he had to offer. Browder explained that he did not wish to leave his friend's shotgun in an unlocked vehicle; that he therefore unloaded the shotgun and broke it open; and that he then entered the courtroom to ascertain how long the owner of the weapon would have to remain in the courtroom. At this point in the proceeding, Judge Brewer informed Browder that his conduct could be characterized as a direct contempt of court punishable by a fine of up to $300 or 6 months' imprisonment. After reading to Browder Alaska's statutory provisions governing contempt, Judge Brewer told Browder

> that coming into the court * * * carrying a shotgun * * * even though it were broken at the breach and carrying the shells in your pocket was, sir, direct contempt of this court and is contumacious and reflects upon the authority of this court and impairs its dignity and authority and I will not have it. Understand that? Furthermore a charge of contempt of court is not one to which you can plead guilty or not guilty. * * *

Browder was then sentenced to six months in the Anchorage City Jail, and remanded to the custody of the bailiff.

Thereafter, on March 31, 1970, with the assistance of counsel, Browder filed, in the superior court, a complaint for a writ of habeas corpus. In connection with the superior court proceedings, Richard Browder filed an affidavit in which he related his version of the events which culminated in his contempt conviction. According to Browder, on March 23, 1970, at approximately 1:30 p. m. he accompanied two companions to the State Court Building at Anchorage, Alaska; "[t]hat upon entering the State Court Building an Alaska State Trooper directed * * * [his] companion to unload and break his shotgun. * * *" Thereafter, his companion complied with the request and they were "permitted to enter, attend, and depart the District Court that was then in session, * * * the * * * shotgun remaining at all times in the possession of [Browder's] companion." When they left, Browder and his companions drove to the Municipal Division of the District Court. Browder states that subsequent to their arrival at the Municipal Division Court building and after some delay,

> he went into court * * * [and] took the above described shotgun with him, broken at the breach and unloaded, because he did not want to leave the shotgun in the truck as the truck could not be locked and he was afraid that the shotgun might be stolen,
>
> That he entered the courtroom and went to his two companions who were sitting in approximately the third row of spectators in the court, and gave the keys to the truck to its actual owner and asked his companions how long they would be in court,
>
> That as soon as he had completed this inquiry and turned to leave the court bailiff approached him and requested that he remove himself from the court,
>
> That at no time while in the court did he make any loud noise, disturbance, gestures, or in any way conduct himself other than in a calm, reasonable and normal manner as any other court spectator would * * *.

According to Browder, he then left the courtroom. Within 15 minutes, the bailiff found Browder and requested him to return to the courtroom. Upon his return, Browder was sentenced to six months' imprisonment for contempt of court.

As part of its opposition in superior court, the State of Alaska filed Judge Brewer's affidavit. In this affidavit, Judge Brewer states that:

> At sometime between 2 p. m. and 2:20 p. m., while occupied with criminal arraignments, he noticed the appearance in court of an individual carrying a shotgun, which individual was dressed in denim overalls and a leather vest, the breast pocket of which gave him the impression it contained shells for the shotgun, with 'Brothers' lettered across the back * * *.

Judge Brewer further says that he found Browder's appearance with the shotgun "shocking" and, because he believed the "shotgun carrier might very well start shooting up the courtroom," feared for the safety of the persons in the courtroom as well as for his own personal safety. It appeared to Judge Brewer that Browder, when approached by the bailiff, "showed some opposition to leaving although he made no threatening gestures with the shotgun * * *."[2] The judge estimated the entire episode lasted approximately one and one-half minutes. According to Judge Brewer, "there was a disruption of the court's business and an interruption in the continuity of the arraignments" because of the unusualness of Browder's appearance and actions.

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[1] On April 2, 1970, Judge Brewer filed, nunc pro tunc as of March 23, 1970, a certificate of contempt. The judge's certificate reads in part as follows:

> I, Joseph J. Brewer, District Judge, State of Alaska, Third Judicial District, hereby certifying that the above-named defendant, Richard F. Browder entered the District Court courtroom located at Sixth Avenue and C Street, Anchorage, Alaska during the session of criminal arraignments therein on the afternoon of March 23, 1970, carrying a shot-gun open at the breach but not dismantled, and carrying shot-gun shells on his person;
>
> That following an argument with the bailiff I directed the bailiff to remove the defendant from the premises in the interests of safety of all persons present;
>
> That subsequently I directed the bailiff to bring the defendant back to the courtroom, minus the shot-gun * * *.

[2] The state also produced an affidavit of John Michael Barbarick, a court bailiff for the District Court of the State of Alaska, Municipal Division. In his affidavit, the bailiff states that on the afternoon of March 23, 1970, "several persons known to him to be members of the Brothers Motorcycle Club" were present in the courtroom. Mr. Barbarick further states that

> [d]uring criminal arraignments, an individual of thickset build, with long hair and a beard, appeared in the courtroom wearing a brown leather vest, levis, and boots, and carrying a shotgun, broken at the breach;
>
> The shotgun carrier, who was known to affiant as another member of the Brother's Motorcycle Club, then approached the other members of that group seated in the courtroom;
>
> * * *
>
> Affiant told the carrier that he would have to get the shotgun out of the courtroom, and the individual replied that it was unloaded;
>
> Judge Joseph J. Brewer * * * interrupted the arraignments to order affiant to remove that man;
>
> At first, the individual acted as though he was going to contest being ordered to leave;
>
> Affiant escorted the individual from the courtroom;
>
> The incident lasted a total of one to one and one-half minutes.

WHETHER A DIRECT CRIMINAL CONTEMNOR MAY BE SUMMARILY CONVICTED BY THE OFFENDED COURT, WITHOUT A JURY TRIAL.

In Baker v. City of Fairbanks, 471 P.2d 386, 401–402 (Alaska 1970), the Alaska Constitution was held to guarantee the right to jury trial in any criminal prosecution in which an accused could be incarcerated in a jail or penal institution. We must now decide whether Alaska's Constitution also guarantees the right to jury trial for a direct criminal contempt[13] which is punishable by a maximum sentence of six months incarceration or $300 fine.

"Contempt" originally embraced any act disrespectful to the king, whether it was an insult or disobedience to a lawful order.[14] The contempt could occur directly to the king himself, but it more likely consisted of disrespect to an agency of the king's government, and most frequently the courts.[15] Likewise, disobedience might be to an order of the king himself; more likely it was to an order of a governmental agency, especially a court or the chancellor.[16]

In its earliest form, contempt was regarded as a crime, and upon conviction was punished by the imposition of criminal sanctions.[17] One writer maintains that this was because "The original law of contempt embraced only what is now known of as criminal contempt."[18] It may also have been because every contempt inevitably contains an element of disrespect for the authority of government,[19] which has since become one of the hallmarks of criminal contempt. In any event, the genesis of modern day contempt was a crime, "which derived its criminality from the active interference with the crown or its acting official agents."[20]

The constitutional power of state and federal courts to punish summarily direct criminal contempts without a jury trial was, until fairly recent times, consistently upheld. In so doing, the cases construed the Due Process Clause, Article III and the Sixth Amendment of the Constitution of the United States as permitting

> summary trials in contempt cases because at common law contempt was tried without a jury and because the power of courts to punish for contempt without the intervention of any other agency was considered essential to the proper and effective functioning of the courts and to the administration of justice.[21]

A consistent theme running throughout the decisions which sustained the authority of courts to punish summarily for contempt is that such power is necessary for preservation of the dignity, decorum, respect, authority, order, and effectiveness of the judicial process. The cases reflect the further belief that the courts must possess immediate means to discipline the contumacious in order to vindicate and ensure the preservation of these values.[22] A second minor rationale advanced in support of the power to dispose summarily of direct criminal contempts is that "where the court has personally observed the contemnor's misbehavior, the usual mode of proof—i. e., trial—may supposedly be dispensed with."[23]

This unique, near despotic traditional power, to impose penal sanctions upon the contemnor without the constitutional safeguards operative in other types of ordinary criminal offenses was significantly circumscribed in Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968). There a contumacious state defendant was sentenced to two years' imprisonment for criminal contempt. Justice White, speaking for the Court, held that serious criminal contempts were to be treated like any other crimes for purposes of the right to jury trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and reversed Bloom's conviction.[24]

In *Bloom*, the Supreme Court held that serious criminal contempts are "so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution * * *."[25] It was reasoned that criminal contempt was a crime in every fundamental respect because it "is a violation of the law, a public wrong which is punishable by fine or imprisonment or both."[26] In the Supreme Court's view, cases in the nature of criminal contempt provided an even more compelling situation than presented by the ordinary criminal case for providing a right to jury trial as a protection against arbitrary exercise of official power because "[c]ontemptuous conduct * * * often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court."[27] The court concluded that neither its prior decisions nor considerations of necessity and efficiency justified denial of a jury trial in cases of serious criminal contempts.[28]

In according primacy to the individual's right to procedural protections over considerations of necessity, efficiency, and the need to further respect for judges and courts, Justice White stated:

> We place little credence in the notion that the independence of the judiciary hangs on the power to try contempts summarily and are not persuaded that the additional time and expense possibly involved in submitting serious contempts to juries will seriously handicap the effective functioning of the courts. We do not deny that serious punishment must sometimes be imposed for contempt, but we reject the contention that such punishment must be imposed without the right to jury trial. * * * When a serious contempt is at issue, considerations of efficiency must give way to the more fundamental interest of ensuring the even-handed exercise of judicial power. * * * Perhaps to some extent sacrifice efficiency, expedition, and economy, but the choice in favor of jury trial has been made, and retained, in the Constitution. We see no sound reason in logic or policy not to apply it in the area of criminal contempt.[29]

Thus, in *Bloom*, the Supreme Court ruled that insofar as the right to jury trial is concerned, criminal contempts were to be treated like other crimes except that nonserious contempts, like petty crimes, need not be tried to a jury.[30] Of particular significance to the case at bar is the Supreme Court's conclusion that a special rule, permitting summary disposition for disorders in the courtroom, was not needed.[31]

We find the reasoning of *Bloom* highly persuasive in regard to its conclusion that the Due Process Clause of the United States Constitution requires that an individual be accorded a jury trial in cases of serious criminal contempts. On the other hand, as a matter of interpretation of Alaska's Constitution, we believe that our decision in *Baker* requires rejection of *Bloom's* conclusion that only in cases of serious criminal contempts does the accused contemnor have the right to a jury trial.[32]

Article I, section 11 of the Alaska Constitution provides in part that "[i]n all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury * * *."[33] In Roberts v. State, 458 P.2d 340, 342 (Alaska 1969), this court's decision-making role in adjudications involving Alaska's constitutional provisions was explained.[34] While recognizing that we were obliged to enforce national minimal constitutional standards required by the United States Supreme Court's interpretations of the Fourteenth Amendment, we said that it would be an abdication of our constitutional responsibilities to look only to the Supreme Court for guidance.[35] Baker v. City of Fairbanks, 471 P.2d 386, 401–402 (Alaska 1970), contains further elaboration on the subject of our decisional obligations under Alaska's Constitution. In that case we said:

> While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court's interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead, we should be moving concurrently to develop and expound the principles embedded in our constitutional law. (footnotes omitted).

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27. *Id.* 391 U.S. at 202, 88 S.Ct. at 1482, 20 L.Ed.2d at 529. In Duncan v. Louisiana, 391 U.S. 145, 156, 88 S.Ct. 1444, 1451, 20 L.Ed.2d 491, 500 (1968), the court said:

> The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.

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Baker presaged our right to jury trial holding in the case at bar. There the accused had demanded and was denied a jury trial upon charges stemming from an asserted violation of a municipality's assault ordinance. We held that the defendant was entitled to a jury trial. Alaska's constitutional provision relating to the right to jury trial was interpreted to mean that in any criminal prosecution an accused, upon demand, is entitled to a jury trial. We defined the category "criminal" prosecution as "including any offense a direct penalty for which may be incarceration in a jail or penal institution."[36] In reaching this construction, we expressly held that contemporary social values, rather than historical categorizations, should determine whether a prosecution is criminal for purposes of the right to jury trial.[37] In *Baker*, we declined to give Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), a mechanical reading in determining the scope of the petty offense exception to the right to a jury trial guaranteed by the Due Process Clause. We reasoned that this court had independent power to determine which offenses are petty or serious so as to require jury trial.

Baker is bottomed on our belief that the right to jury trial holds a central position in the framework of American justice,[38] and our further belief as to the primacy which must be accorded the accused's right to a fair trial against considerations of convenience or expediency to the state.[39] In holding that in any criminal prosecution the accused, upon demand, is entitled to a jury trial, we said in *Baker* that:

> In interpreting the Alaska Constitution we must consider the consequences of denying jury trial to the person being prosecuted. It is of small moment to the citizen whether the period of incarceration is long or short * * *. Punishments inflicted at that level can be as harsh and as devastating to the life of the citizen as those meted out for more serious misdemeanors and for felonious conduct. Why should the remedial process be less just at one level than at another? We should be alert against attempts by government to whittle away fundamental rights on grounds of expediency. It is our constitutional duty to prevent such untoward consequences for the citizen at large.[40]

[6] We hold that direct criminal contempts must be treated like any other criminal prosecution for purposes of the right to jury trial under article I, section 11 of the Alaska Constitution. Direct criminal contempts meet every facet of *Baker's* definition of the category of "criminal prosecutions" and underlying policy reasons for honoring Alaska's constitutional guarantee to a right to jury trial. Under AS 09.50.020 the contemnor may be incarcerated in a jail or penal institution for six months.[41] Thus, it is clear that a criminal contempt proceeding is criminal prosecution within article I, section 11 of the Alaska Constitution. In the instant case, we believe that considerations of convenience and expediency to the state are convincingly outweighed by the right of an individual to be convicted only by means which are fundamentally fair. We therefore hold, in accordance with *Baker*, that article I, section 11 of the Alaska Constitution guarantees the accused the right to jury trial for a direct criminal contempt.[42]

Not only do we think that the plain meaning and spirit of *Baker* requires rejection of *Bloom's* denial of the right of jury trial in non-serious cases of criminal contempt, but we are also convinced that analysis of the premises upon which the power to summarily imprison for criminal contempt indicates that no exception to the right to jury trial should be made for petty contempts where imprisonment is a potential sanction.

It was mentioned earlier that it has long been thought that the power to punish summarily for contempt is necessary for the preservation of the dignity, authority, and effectiveness of the courts, and to engender respect for judges and the courts.[43] The major premise behind this reasoning is that such goals can be secured only through fear of punishment by the state. The necessity for retention of this fear-based premise is eloquently refuted by Justice White in Bloom v. Illinois, where he states:

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[43] Civ.R. 90(a) is reflective of this traditional approach.

One author writes:

> The contempt power is understandable when seen through the perspectives of its age of inception, an age of allegedly divinely ordained monarchies, ruled by a king totally invested with all sovereign legal powers and accountable only to God. Under any circumstances resistance to the king was a sin which would bring damnation.
>
> * * * Yet, it takes some straining of reason to include the contempt power within the best characteristics of Anglo-American, freedom-conscious law. And even assuming the value of this power device in a legal system such as ours, it is still another question whether it ought to be exercised in the procedural manner or to the quantitative extent that it is now.

R. Goldfarb, The Contempt Power 2, 11–12 (1963).

> We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries.[44]

We think the goals of preservation of the authority and effectiveness of the judicial process are obtainable by means other than the use of the extraordinary power to imprison summarily for contempt. Even without this drastic power, our trial courts may summarily impose a fine of up to $100 for various types of contempt, including "any * * * unlawful interference with the process or proceedings of the court."[45]

The court has the authority to cite for criminal contempt (i. e., to bind the alleged contemnor over for trial) on its authority alone. The court may order a contumacious defendant to be taken from the courtroom.[46] Unruly spectators may, in addition to summary fine or citation, be ordered from the courtroom. The court retains the authority to imprison for civil contempt in appropriate instances. Each of these powers involves one degree or another of punishment; in each case the trial court acts summarily. It is thus clear that our trial courts will not be rendered impotent if denied the power summarily to imprison for most direct criminal contempts.[47]

[7] We therefore think that Judge Lewis's ruling that Browder was entitled to a jury trial under Alaska's Constitution on the question of whether he was guilty of contumacious conduct should be affirmed.[48] In our view, this holding is in harmony with the rationale of *Baker* and is reflective of the central position we believe the right to jury trial holds in our system of criminal justice. We think fundamental fairness requires that no one individual should be permitted to act as prosecutor, trier of fact, and judge in the same proceeding. Neither reason nor logic has persuaded us that this anomalous summary power to imprison for contempt is to be found "within the intention and spirit of our local constitutional language." Rather, we find that a right to jury trial in a direct criminal contempt situation is "necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage." We therefore hold that Browder is entitled to a jury trial on the question of whether he committed a criminal contempt. We further hold that under article I, section 11[49] of Alaska's Constitution Browder is entitled to have the assistance of counsel in defense of this charge.[49a]

BONEY, Chief Justice (concurring).

I am in agreement with the result achieved by the majority in this case. I join in all of the opinion except for portions of the discussion on the right to jury trial in all direct contempt cases where imprisonment is a possible punishment.

In my opinion, the majority has proceeded to expand the right of a jury trial by giving our decision in Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970) an overbroad application when it was unnecessary to do so in deciding this case. Now petty direct contempts may be tried before a jury even when a sentence as little as one day in jail is imposed.

If *Baker* is to be read literally as is indicated by the majority, a jury trial would be permissible in all criminal contempt cases because our contempt statute provides a maximum fine of $300.00 or imprisonment for no more than six months.[1] In determining the right to jury trial, under the *Baker* rationale, we would look to the possible sentence rather than the one actually imposed. The court should state whether it follows the *Baker* approach or not.

In my opinion, Browder was certainly entitled to a jury trial under article I, section 11 of the Alaska Constitution. However, my approach differs from that of the majority in that I would look at the sentence actually imposed by the trial judge in determining whether the contempt was serious or petty. I believe the trial judge has inherent power to summarily punish contempts occurring in his presence by imposing minimal sanctions. These sanctions would include a fine and a jail sentence. For example, I do not believe a fine of at least $100.00 and a five day jail sentence would make a contempt a serious one warranting trial by jury. There is no need at this time for me to precisely draw a line between petty and serious contempts as this is not the opinion of this court. In this case, the trial judge summarily imposed a six-months jail sentence. This indicates the seriousness of the alleged contempt. On balance, the court's summary power must give way to Browder's rights to the procedural safeguards which are incident to any conventional criminal proceeding of a serious nature.

ERWIN, Justice (concurring).

I concur in the Court's opinion and add these additional observations chiefly for exampled-tcagrten cmfwyp fwypwwwww emphasis.

LESSON PLAN 6

JURY DELIBERATIONS

INTRODUCTION:

Jury service is one place in our democracy which is not a spectator sport. Nearly all adult Alaskans (except some village residents) have an opportunity at some time in their lives to serve as members of a jury.

> (a) A person is qualified to act as a juror if the person is
> (1) a citizen of the United States;
> (2) a resident of the state;
> (3) at least 18 years of age;
> (4) of sound mind;
> (5) in possession of the person's natural faculties;
> (6) able to read or speak the English language.
> (b) A person is not disqualified from serving as a juror solely because of the loss of hearing or sight in any degree or a disability that substantially impairs or interferes with the person's mobility. (A.S. 09.20.010)

Nevertheless, one of the least understood procedures in the American judicial system is the decision-making process used by jurors, especially in juries containing a high percentage of Alaska natives. After all of the witnesses have been heard, the lawyers have made their arguments, and the judge has given her instructions to the jury, the jurors retire to a closed room, guarded by the bailiff, where they make their decision.

Jurors are required to follow the judge's instructions. However, the average juror may understand no more than one-half of all the judge's instructions on how to apply the law to the facts in the case. The only direction received form the judge as to the process to be used in making their decision is that they are to select one member to act as foreperson and that person presides over the deliberations. From the moment they retire until they leave the jury room to report their decision, the process the jurors actually follow to reach a decision is up to them. The decision-making style used may depend upon the ethnic makeup of the jury. Alaska natives, due to their unique language and cultural background, may deliberate in their native tongue and may use traditional decision-making processes to arrive at a decision. This exercise gives students an opportunity to learn to be jurors prior to actually serving as jurors.

OBJECTIVES:

Students will be able to:

1. Define the following concepts: a defendant is innocent until proven guilty, the burden of proof is always on the state, the burden of proof in criminal cases is beyond a reasonable doubt, and the jurors must be unanimous in their decision.

2. Perform the role of a juror.

3. Make a decision as to the guilt or innocence of a defendant.

4. Identify one reason supporting their decision.

GRADE LEVEL: 7th to 12th grade (Depending upon grade level, instructions should be rewritten so that they are appropriate for that grade level. Older students who have previously served as jurors may be used as facilitators to assist younger students in working through the instructions and reaching their decision.)

TIME TO COMPLETE: 7 hours (including trial).

MATERIALS:

1. The attached trial instructions, or the instructions actually used in a trial, and a verdict form.

PROCEDURE:

1. Prior to beginning the lesson, the teacher should review the attached instructions with the students in order to ensure that they have a working knowledge of the concepts involved: a defendant is innocent until proven guilty, the burden of proof is always on the state, the burden of proof in criminal cases is beyond a reasonable doubt, and the jurors must be unanimous in their decision. This may be done by having groups of students rewrite each instruction in plain English, explain the rewritten instruction to the rest of the class, and post the rewritten instruction for use during the jury deliberation process.

2. Divide the class into groups of six, which is the size of misdemeanor trial juries in Alaska. If there are left over students (or students who did not observe the trial), assign them the roles of bailiff or judge.

3. Each group will observe a trial, normally the same trial. These trials may be actual trials at the courthouse, or mock trials performed by the class. If the students have observed a jury trial at the courthouse, they will simply follow the same instructions which the judge has given to the actual trial jury. If a mock trial is used, give the attached instructions (and oath) to the jurors in the following order.

A. Begin with the Instruction 1, which precedes the oath the jurors will take.

B. Administer the oath to the jurors. The oath is as follows:

> You and each of you do solemnly swear (or affirm) that you will well and truly try the issues in the matter now before the court solely on the evidence introduced and in accordance with the instructions of the court; so help you God.

Although in some courts the oath is administered by the clerk or bailiff, the better practice is for the judge to administer it herself. If the oath is carefully administered to prospective jurors, it may serve to awaken their consciences to the importance of the task assigned to them. This advice is equally sound for both courtroom and classroom practice.

C. Give Instructions 2 through 10.

D. After the trial has been completed and counsel have given their arguments, show the film *Twelve Angry Men* which models the responsibilities of each juror.

E. Give Instruction 11. (In some courts in Alaska, arguments of counsel follow the giving of final instructions.)

F. The law to be applied in the case depends upon the crime charged. In Alaska, the *Alaska Pattern Jury Instructions (Criminal)* contains model instructions for criminal cases. For each crime (except driving and local option offenses), there is an instruction containing the elements which must be proven and the terms which must be defined for the jury. Instructions 12 through 14 contain instructions for assault in the fourth degree (for example, a husband beats up his wife).

G. Give Instructions 15 through 20.

4. Give one complete copy of the instructions to each jury, along with a copy of the verdict form. Allow each jury to deliberate. If jurors have questions, they must be sent to the judge (teacher or student) in writing, and their response must be in writing. If jurors have not completed their work in the time allotted, have them continue deliberations after school.

5. Each jury will prepare a written decision on the form provided (or the foreperson will report that the jury is "hung" or deadlocked).

6. The decisions of the juries will be posted on the board and will be used as the basis for debriefing the activity. Bring someone into the classroom who has served on a jury to assist in the debriefing (since many teachers never get the opportunity to actually deliberate as part of a jury, community members will know more about how a jury actually operates than will a teacher). How did each jury organize itself? How did they reach their decision? Which facts were important to their decision? What else did they want to know? How did the majority of jurors feel about those who were holding out and slowing down the process? How did the minority feel? Which instructions did they understand and which did they not understand (a crucial question, since they will not have this opportunity once they are actually sitting on a jury)?

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

NOTE:

In many villages in Alaska, especially in the Yukon-Kuskokwim region, citizens never have an opportunity to serve on a jury. This is based upon the belief that there are inadequate facilities for both holding a trial and for housing and feeding jurors, witnesses, and court personnel (in other words, there are no hotels and restaurants in the village). Completion of the above exercise in a village classroom may lead students to petition the Alaska Court System to allow jury trials in their community. There are many options for solving the facilities problem. For example, various villagers could volunteer to make their homes available for bed and breakfasts, thus creating the necessary facilities in the village.

No. 1

Before I give the juror's oath to you, I want to impress upon you the seriousness and importance of being a member of a jury. Trial by jury is a fundamental right in Alaska. It assures that each case will be decided by citizens who are fairly selected, who come to a case without bias, and who will attempt to render a fair verdict upon the evidence presented.

You took one oath before you were examined as to your qualifications to be jurors. Now you are called upon to take a second oath. By this oath you will swear or affirm that you will decide the case on the evidence presented according to the law that I will give you.

When you take the oath you accept serious and important obligations. The jury system depends on the honesty and the integrity of individual jurors. You affirm that your answers to questions put to you concerning your qualifications to sit on this jury were complete and correct. You affirm that you are truly impartial in this case. You affirm that there is nothing to your knowledge that I or the parties should know about your ability to sit as a juror in this case. If any of you believe you should not take this oath or there is something that I or the parties should know that we do not know, please raise your hand.

The oath will now be administered.

No. 2

Now that you have taken your oath, you are ready to serve as jurors. To assist you in your task, I am going to summarize for you the way in which the trial will be conducted. After you have heard the evidence, I will briefly explain some of the law that you will need to know.

The trial will proceed in the following way. First the prosecutor will make an opening statement, outlining what the state expects to prove. Next, the defendant's attorney may make an opening statement, or may reserve it. After that, the state will present its evidence. When the state has concluded its case the defendant may present evidence, but is under no obligation to do so. If the defense elects to present evidence, defense counsel will begin with an opening statement if he or she has not already done so. If the defendant presents any evidence, the state may present rebuttal evidence.

After the evidence is presented, I will give you additional instructions and the parties will have the opportunity to argue the case to you. The state, because it has the burden of proof, has the right to argue first. Then the defendant is given an opportunity to argue. If the defendant does so, then the state is given the opportunity to rebut the argument.

After the arguments end, I will give you your final instructions, then you will meet together to evaluate the evidence, to apply the law to the evidence, and to reach a verdict if you are able.

No. 3

You are now about to hear the evidence in this case. After you do, your job will be to decide how to evaluate it in light of the law that I will give to you at the end of the case.

I will rely on you to determine the facts. This must be done by relying solely upon the evidence received in this trial; you must not be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling, but must base your conclusions only upon a fair consideration of the evidence. That evidence may include the sworn testimony of witnesses, exhibits submitted into the record, facts agreed to by the attorneys, and facts judicially noted by the court. The evidence should be considered and viewed by you in light of your own observations and experiences in everyday life, but you may not consider any other sources of information not presented to you in this court.

It will be my duty to decide what law must be applied. In so doing, I will look to a number of sources: the statutes of the State of Alaska; the decisions of the Alaska Supreme Court and other learned courts; and the advice of the attorneys who have appeared before you. You must apply the law as I give it to you; you may not apply the law as you think it is or should be, or as another may have told you it is. The instructions I will give you are the only law that you may apply.

No. 4

At no time during the course of the trial will it be my intention, by anything I say or do, or by any questions that I may ask, to intimate or suggest what you should find to be the facts on any questions submitted to you, or that I believe or disbelieve any witness. If anything I do or say seems to so indicate, you will disregard it and form your own opinion. What the verdict shall be is your sole and exclusive duty and responsibility.

No. 5

There are rules of law that prevent some types of information from being presented as evidence in a court of law. This is why objections may be made to certain questions of counsel, answers of witnesses, or exhibits. I know that you will wonder why some evidence must be excluded. It would take too long for me to explain this to you in detail. But basically these rules are designed to do two things. First, they try to help you focus on important and reliable evidence by keeping out interesting but not very important or reliable information. Second, the rules help you decide the case objectively without being swayed by information that might cause you to respond emotionally. You should not be influenced by the fact that objections are made to questions or to the presentation of evidence or that requests are made that I take certain actions; nor should you be influenced by the number of objections or requests that are made. Objections or requests are not evidence. You should draw no conclusions about the case from my response to objections or requests. My rulings on these matters will be determined by the law and will not reflect anything about the merits of the case or my views of the evidence or the witnesses. So please remember that my rulings that exclude evidence or that bar questions are designed to help you decide the case fairly. Of course, if I decide that certain evidence should be excluded, you must disregard it.

No. 5 (cont'd)

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, I do not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, you are the exclusive judges of the credibility of all witnesses and the weight and effect of all evidence.

When I sustain an objection to a question addressed to a witness, you must disregard the question entirely, and may not draw any inference from the wording of it, nor speculate as to what the witness would have said if permitted to answer the question.

No. 6

Every person who testifies under oath is a witness. You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding whether to believe a witness or how much weight to give a witness's testimony, you should consider anything that reasonably helps you to judge the testimony. Among the things you should consider are the following:

1. The witness's attitude, behavior and appearance on the stand and the way the witness testifies;

2. The witness's intelligence;

3. The witness's opportunity and ability to see or hear the things about which the witness testifies;

4. The accuracy of the witness's memory;

5. Any motive of the witness not to tell the truth;

6. Any interest that the witness has in the outcome of the case;

7. Any bias of the witness;

8. Any opinion or reputation evidence about the witness's truthfulness;

9. Any prior criminal convictions of the witness relating to honesty or veracity;

10. The consistency of the witness's testimony and whether it is supported or contradicted by other evidence.

No. 6 (cont'd)

If you believe that a witness testified falsely as to part of his or her testimony, you may choose to distrust other parts also, but you are not required to do so.

You should bear in mind that inconsistencies and contradictions in a witness's testimony, or between the testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not unusual for persons to forget or to be mistaken about what they remember and this may explain some inconsistencies and contradictions. And it is not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

You may believe all, part, or none of the testimony of any witness. You need not believe a witness even though his or her testimony is uncontradicted. But you should act reasonably in deciding whether or not you believe a witness and how much weight to give to the testimony.

No. 7

You are not bound to decide in conformity with the testimony of a greater number of witnesses, which does not convince you, as against the testimony of a lesser number of witnesses which appeals to your mind with more convincing force. Thus you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not the number of witnesses, but the convincing power of the evidence.

No. 8

From now until the end of the trial when I send you to the juryroom to decide this case, you may not discuss this case with, or offer an opinion about it to, anyone else. This means not with anyone else on the jury and also not with any other person, including court personnel. You are expected to evaluate the evidence independently until you are told to deliberate as a group. As the case moves along, you should keep in mind that evidence can only be presented a piece at a time. You should keep an open mind and form no opinion until the end.

Until the trial is over, you must avoid contact with any of the persons who are participating in the trial. This includes the parties, the lawyers, the witnesses, and any persons who you see in close contact with these individuals. Do not conduct any investigations outside the courtroom. Remember that you are to decide the case only on the evidence presented here in court.

No. 9

Facts may be proved by direct evidence, by circumstantial evidence, or by both.

Direct evidence is given when a witness testifies about an event which the witness personally saw or heard.

Circumstantial evidence is given when a witness did not personally see or hear an event but saw or heard something which, standing alone or taken together with other evidence, would lead a reasonable person to conclude that the event occurred.

Both types of evidence are admissible and may be considered by you. What weight you choose to give to the evidence and what conclusions you might draw from it are left solely up to your good judgment and common sense.

No. 10

The complaint in this case charges:

That on or about the 1st day of January, 1990, at or near Kwethluk, in the Fourth Judicial District, State of Alaska, Sam Sam did unlawfully commit the crime of assault in the fourth degree by recklessly causing physical injury to another person, to wit, Mary Sam.

The complaint is the charging document in this case and is a mere accusation against the defendant. It is not evidence of the guilt of the defendant, and you should not permit yourself to be influenced to any extent, however slight, against the defendant because of the filing of the complaint.

No. 11

The evidence has now been presented to you. I will now give you the instructions concerning the law to be applied to this case.

No. 12

A person commits the crime of assault in the fourth degree if the person recklessly causes physical injury to another person.

In order to establish the crime of assault in the fourth degree it is necessary for the state to prove beyond a reasonable doubt the following:

First, that the event in question occurred at or near Kwethluk, in the Fourth Judicial District, State of Alaska and on or about the 1st day of January, 1990;

Second, Sam Sam recklessly caused physical injury to another person.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you shall find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you shall find the defendant not guilty.

No. 13

A person acts "recklessly" with respect to a result described by the law when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur. The risk must be of such a nature and such a degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

No. 14

"Physical injury" means physical pain or impairment of physical condition.

No. 15

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate -- with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless and until you are satisfied beyond a reasonable doubt of the defendant's guilt, after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of defendant's guilt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act in his or her important affairs. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden

No. 15 (cont'd)

never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged, beyond a reasonable doubt, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

No. 16

At the close of the trial, counsel argue the case to you. The arguments of counsel, based upon study and thought, may be, and usually are, distinctly helpful. However, it should be remembered that arguments of counsel are not evidence and cannot be considered as such. It is your duty to give careful attention to the arguments of counsel, if they are based upon the evidence and upon the law as given to you by me in these instructions. But arguments of counsel, if they depart from the facts or from the law, should be disregarded. Counsel, although acting in good faith, may be mistaken in their recollection of evidence given during the trial. You are the ones to determine what evidence was given in this case, as well as what conclusions of fact should be drawn therefrom.

No. 17

In arriving at a verdict in this case, the subject of penalty or punishment is not to be discussed or considered by you. That matter is one that lies solely with the court and must not in any way affect your decision as to the innocence or guilt of the defendant.

No. 18

During your deliberations, a bailiff will be appointed to keep you together and prevent conversation between you and any other persons. The bailiff will provide you with such requirements as meals, possible lodging, and will make phone calls to your families where necessary to let them know of your schedule. The bailiff cannot answer any questions about this case or provide you with any information, books or materials as I have strictly forbidden this. The bailiff, as well as all other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of this case.

Bear in mind also that you are never to reveal to any person--not even to the bailiff or to me--how the jury stands, numerically or otherwise, on the question of guilt or innocence of the accused, until authorized by the court.

Any violation or perceived violation by a fellow juror of any item about which I have cautioned you, is to be reported by you, as a body or individually, to me.

If it becomes necessary during your deliberations to communicate with me, you may send a note by the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever communicate with me by any means other than a signed writing. The writing should contain the date and time of the communication. I will never communicate with any member of the jury other than in writing or orally here in open court.

No. 19

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It is rarely productive of good for a juror at the outset to make an emphatic expression of his or her opinion on the case or to state how he or she intends to vote. If a juror did that at the beginning, a sense of pride might be aroused, and the juror might hesitate to change position even if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

As jurors you have a duty to consult with one another and to deliberate with a view to reaching an agreement, if that can be done without violence to individual judgment.

Each juror must decide the case for himself or herself, but only after an impartial consideration of the evidence with the other jurors.

In the course of deliberations, a juror should not hesitate to re-examine his or her own views and change his or her opinion if convinced it is erroneous.

But no juror should surrender an honest conviction as to the weight or effect of the evidence solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

No. 20

You were accepted as jurors in this case in reliance upon your answers to the questions asked you concerning your qualifications. You are just as much bound by those answers now, and until you are finally discharged from further consideration of this case, as you were then. The oath taken by you obligates you to try this case well and truly and to render a true verdict according to the law and the evidence. Both the state and the defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict.

Upon retiring to the jury room you will select one of your members, man or woman, to act as foreman who will preside over your deliberations, speak for you, and fill in and sign the verdict.

In order to reach a verdict, all jurors must agree to the decision. As soon as all of you have agreed to a verdict, you shall date it and have it signed by your foreman and then shall return with it to this room.

Dated at ______________________, Alaska, this _____ day of ____________________, 19____.

____

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

STATE OF ALASKA,

Plaintiff,

vs.

SAM SAM,
DOB: 01-01-69

Defendant.
___________________________/

Case No. 4BE-S90-001 Cr.

VERDICT

We, the jury, find the defendant, SAM SAM,

_________________________ GUILTY _________________________ NOT GUILTY of

Assault in the Fourth Degree as charged in the complaint.

DATED at Bethel, Alaska this _______ day of

__________________, 1990.

____
Foreperson

LESSON PLAN 7

MISDEMEANOR SENTENCING

INTRODUCTION:

A commonly misunderstood process in Alaska law is the sentencing of adults in criminal proceedings. Sentencing in Alaska is governed by three sources: the Alaska Constitution, *Chaney v. State*, and the Alaska Statutes.

Article I, section 12 of the Alaska Constitution says, in part:

> Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

State v. Chaney, 477 P.2d 441 (Alaska 1970) set out the factors which a court must consider in order to carry out this constitutional mandate. The *Chaney* factors are:

> (1) Rehabilitation of the offender into a noncriminal member of society.
>
> (2) Isolation of the offender from society to prevent criminal conduct during the period of confinement.
>
> (3) Deterrence of the offender himself after his release from confinement or other penological treatment.
>
> (4) Deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender.
>
> (5) Community condemnation of the individual offender or, in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.

To these five factors - rehabilitation, isolation, deterrence of self and others, and reaffirmation of community norms - the Alaska legislature in 1978 added two additional considerations:

> (6) Seriousness of the defendant's present offense in relation to other offenses.

(7) The circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order.

In determining a defendant's sentence, the court must consider each of these factors, although the weight given to any one particular factor is generally left in the sentencing judge's discretion.

The most that a defendant may receive in a misdemeanor case is one year in jail, or a $5000 fine, or both. The judge has two primary options available at sentencing. She may give the defendant a sentence which will become part of his permanent record. The terms of the sentence may include:

imposing a fine of up to $5000 ("Defendant is fined $300.")

ordering the defendant to serve a continuous or periodic period of imprisonment ("Defendant is committed to the custody of the Commissioner of Corrections to serve 30 days.")

suspend a portion of the fine or jail term, and place defendant on probation for a period of up to five years ("Defendant is fined $500 with $200 suspended)

placing the defendant on probation, if a portion of his fine or imprisonment (or both) is suspended ("Defendant is placed on probation until January 14, 1991, subject to the following conditions: 1. Violate no laws; 2. No consumption of alcohol.")

ordering the defendant to make restitution ("Defendant is ordered to pay $32.79 to Moses Moses for the broken window.")

ordering the defendant to perform community work ("Defendant is ordered to perform 30 hours of community work for the Eek Traditional Council.")

suspending or revoking a license, and ordering forfeiture of property (in some cases).

The second option is for the judge to give the defendant a suspended imposition of sentence (S.I.S.) Rather than giving the defendant a sentence, the court may place him on probation for a period (the maximum period of probation is equal to the maximum period of imprisonment that could have been imposed), subject to conditions of probation which may include periodic or continuous imprisonment, restitution, community work, or other terms. If he successfully completes his period of probation, the court may then clear his record of the conviction (a real advantage to this alternative, since it basically gives the defendant a second chance). The downside of the S.I.S. is that if the defendant violates any of the conditions, the judge may bring the defendant back to the court and either impose more conditions or sentence him (the sentence will probably be harsher since the court now has evidence that the defendant has difficulty in following conditions of probation). An S.I.S. is particularly appropriate for young first offenders who have committed nonviolent crimes. the form used by Alaska courts for misdemeanor sentencing is attached.

For misdemeanors, the defendant is normally told what his sentence will be directly after either pleading guilty or no contest (this is called a change of plea, or COP, as in "Copping a plea"), or being found guilty by a jury. (In felony cases, there is often a two month time span between the two events, which allows the Department of Corrections to investigate and write a presentence report to assist the court in determining the appropriate sentence for the defendant.) Whether found guilty or pleading guilty or no contest, the judge finds the defendant guilty and begins the sentencing hearing. If any witnesses (such as the victim of the crime) are to be heard, they normally speak first. After witnesses are heard, the District Attorney makes her argument, the defense attorney makes his argument, and then the defendant has an opportunity to speak (called the right of allocution) or may remain silent. After giving everyone an opportunity to speak and considering their comments, the judge will make her decision and state the reasons supporting that decision, normally referring to the seven criteria listed above.

OBJECTIVES:

Students will be able to:

1. List the three sources which govern sentencing in Alaska.
2. Identify five factors which govern sentencing in Alaska.
3. Identify five terms which may be included in a sentence.

4. Identify the maximum sentence for a misdemeanor in Alaska.

GRADE LEVEL: 9th to 12th grades

TIME TO COMPLETE: 3 hours

MATERIALS:

1. The attached handout, "The Oyagak Sale."
2. Court judgment forms. A model form for this case is completed.
3. (Optional) An edited version of the court's decision in *Oyagak v. State*, M.O.J. No. 1756 (March 1, 1989)

PROCEDURE:

1. Reenact the sale of Vodka, as described in the attached handout.

2. Use an attorney, or provide the above information to the students in a short presentation.

3. Pass out the attached handout to students, along with a blank judgment form for each student.

3. Divide the class into groups of three. Each group will read the handout, "The Oyagak Sale", and list the facts which are in Ms. Oyagak's favor and those which are not.

4. Bring the students back together and list the factors found for each side. Discuss what other facts would help the court in making its decision on Ms. Oyagak's sentence. Review the seven sentencing criteria.

5. It will be helpful here to have someone model a good sentencing argument. This could be done by using the attorney who has made the presentation to the class, visiting a court and watching a sentencing, or obtaining a videotape of a sentencing argument.

6. Assign each student the role of District Attorney, defense attorney, or judge. Have all students playing the same role meet together. The District Attorney and the defense attorney groups will list the sentencing arguments appropriate to their position and possible sentences which could be given. The judge group will list the arguments it expects from both sides and possible sentences which could be given. Remind each student to complete the checklist on the handout to make sure she has considered each sentencing factor.

7. The following class period, the students will reconvene in groups of three, each group containing a District Attorney, a defense attorney, and a judge. The District Attorney and the defense attorney will orally present their positions to the judge who, after hearing from them, will decide what sentence is appropriate.

8. Debrief the sentencing process by comparing the sentences given. Which factors were relied on the most and why. Considering the new higher penalties for this crime, what sentence would you give Ms. Oyagak? If you wish, you may distribute the actual decision in the case, which is attached.

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

2. Students must fulfill the requirement of completing the checklist.

THE OYAGAK SALE

Pursuant to A.S. 04.11.010, Barrow has prohibited the unlicensed commercial sale of alcohol within its community. On March 1, 1988, Eleanor Oyagak was found guilty by a jury of selling one bottle of Vodka to an undercover police informant for $40. The sale was made at Ms. Oyagak's home, while several other people were present. The $40 used for the purchase was not found on Ms. Oyagak, and was never recovered by the police.

Ms. Oyagak was a lifetime resident of Barrow, twenty-eight years old, the mother of two young children, and had never been in trouble before. There was no evidence that she had sold any other bottles of alcohol. At sentencing, Ms. Oyagak continued to deny that she ever sold the alcohol.

Alcohol abuse is a severe problem in Barrow. It is involved in almost all of the criminal cases coming before the Barrow court.

The minimum sentence for this offense is ten consecutive days of imprisonment. The maximum sentence is one year of imprisonment, a $5000 fine, or both. (Note: Effective August 3, 1988, the new maximum sentence for this crime is 5 years in jail, a $50,000 fine, or both.)

THE CHECKLIST

Have you considered (thought about) each of the following factors in reaching your decision? How have you considered each factor? Use this form to answer these questions, checking each factor as you consider it and explaining how you have considered each factor. If you have not considered all of them, your decision will be overturned by the Alaska Court of Appeals.

_____ (1) Rehabilitation of the offender into a noncriminal member of society.

How?

_____ (2) Isolation of the offender from society to prevent criminal conduct during the period of confinement.

How?

_____ (3) Deterrence of the offender himself after his release from confinement or other penological treatment.

How?

_____ (4) Deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender.

How?

_____ (5) Community condemnation of the individual offender or, in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.

How?

_____ (6) Seriousness of the defendant's present offense in relation to other offenses.

How?

_____ (7) The circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order.

How?

IN THE DISTRICT COURY FOR THE STATE OF ALASKA
AT ______________________

☐ STATE OF ALASKA
☐

vs.

______________________ **JUDGMENT** (Count ______________________)

DOB: __________ ID# ______________________ CASE NO. ______________________ CR

Date of Offense: ______________________ Statute / Ord. / Reg. ______________________
Crime Charged: ______________________

PLEA: ☐ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☐ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☐ GUILTY of the crime named above.
☐ GUILTY OF ______________________
Statute / Ord. / Reg.

Any appearance bond in this case is exonerated.

SENTENCE

☐ Imposition of sentence is suspended and defendant is placed on probation as set forth below.

☐ Sentence is imposed as follows:

☐ Defendant is fined $__________ with $__________ suspended. The unsuspended $__________ is to be paid ______________________

☐ Defendant is committed to the custody of the Commissioner of Corrections to serve __________ days with __________ (hours) (days) suspended. The unsuspended __________ (hours) (days) are to be served ______________________

☐ Defendant is ordered ______________________

☐ Defendant's ☐ driver's ☐ __________ license is to be immediately surrendered to the Court.
License Number: __________ State: __________
Such license or privilege to apply therefor is:
☐ (revoked) (suspended) for __________ (days) (years)
☐ A limited license is issued for __________ (days (years) with the following limitations:

☐ Defendant is placed on probation until __________, 19____, subject to the following conditions:

____
EFFECTIVE DATE

____
JUDGE'S SIGNATURE

I certify that on ______________________
a copy of this form was sent to:

____
TYPE OR PRINT JUDGE'S NAME

CLERK: __________

CR-460S (6/89) (st.5)
JUDGMENT — DISTRICT COURT

BEST COPY AVAILABLE

Crim.R. 32

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
AT BARROW

☒ STATE OF ALASKA
☐

vs.

ELEANOR OYAGAK **JUDGMENT** (Count I)

DOB: 6-5-80 ID# - CASE NO. 4BA-S88-137 CR

Date of Offense: 1-1-88 Statute / Ord. / Reg. A.S. 04.11.010
Crime Charged: Sale of Alcohol Without A License

PLEA: ☒ Not Guilty ☐ Guilty ☐ No Contest TRIAL: ☐ Court ☒ Jury

The defendant was found and adjudged:

☐ NOT GUILTY. IT IS ORDERED that the defendant is acquitted and discharged.
☒ GUILTY of the crime named above.
☐ GUILTY OF ______________________________ Statute / Ord. / Reg.

Any appearance bond in this case is exonerated.

SENTENCE

☐ Imposition of sentence is suspended and defendant is placed on probation as set forth below.

☒ Sentence is imposed as follows:

☒ Defendant is fined $ 750 with $ 300 suspended. The unsuspended $ 450 is to be paid by July 1, 1988

☒ Defendant is committed to the custody of the Commissioner of Corrections to serve 240 days with 160 ~~(hours)~~ (days) suspended. The unsuspended 80 ~~(hours)~~ (days) are to be served beginning March 5, 1988

☒ Defendant is ordered to pay restitution to the City of Barrow in the amount of $40.

☐ Defendant's ☐ driver's ☐ ______ license is to be immediately surrendered to the Court.
License Number: ______ State: ______
Such license or privilege to apply therefor is:
☐ (revoked) (suspended) for ______ (days) (years)
☐ A limited license is issued for ______ (days (years) with the following limitations:

☒ Defendant is placed on probation until 9-1, 1989, subject to the following conditions:

1. No alcohol.
2. Obey all laws.

3-1-88
EFFECTIVE DATE

Monte B. Engle
JUDGE'S SIGNATURE
MONTE B. ENGEL
TYPE OR PRINT JUDGE'S NAME

I certify that on ______
a copy of this form was sent to:

CLERK: ______

CR-460S (6/89) (st.5)

THE COURT OF APPEALS OF THE STATE OF ALASKA

RECEIVED
MAR 3 - 1989
Public Defender Agency
SDO

ELEANOR OYAGAK,
Appellant,
v.
STATE OF ALASKA,
Appellee.

File No. A-2623

MEMORANDUM OPINION
AND JUDGMENT*

[No. 1756 - March 1, 1989]

Appeal from the District Court of the State of Alaska, Second Judicial District, Barrow, Monte B. Engel, Magistrate.

Appearances: Nelson Traverso, Assistant Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for Appellant. Pamela T. Basler, Assistant District Attorney, Barrow, Harry L. Davis, District Attorney, Fairbanks, and Grace Berg Schaible, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

SINGLETON, Judge.

A jury convicted Eleanor Oyagak of the sale of liquor without a license, AS 04.11.010. Magistrate Monte B. Engel sentenced Oyagak to 240 days in jail with 160 days suspended, imposed a $750 fine with $300 suspended, and ordered restitution in the amount of $40. The court also placed Oyagak on probation for eighteen months. Oyagak appeals three evidentiary rulings and her prison sentence.[1] We affirm.

Oyagak argues that the trial court erred in sentencing her to a period of eighty days' imprisonment. She points out that she is a first-time offender, that she is a twenty-eight-year-old mother of two young children, and that she has lived in Barrow most of her life with a crime-free past. She stresses that no aggravating circumstances were shown which would warrant a sentence greater than the ten-day mandatory minimum provided by AS 04.16.200(d). She also points out that there was no evidence that she was engaged in an established commercial enterprise. In sentencing Oyagak, the trial court stressed deterrence of others and affirmation of community norms. Magistrate Engel noted that alcohol abuse was a severe problem in Barrow, and that such abuse no doubt led the community to ban the unlicensed commercial sale of alcohol. He stressed that alcohol abuse was involved in almost all of the criminal cases coming before the Barrow court. Consequently, in the trial court's view, individuals contemplating sale of alcohol needed to know that they would face a substantial jail sentence if apprehended. He reviewed other sentences imposed on first offenders for alcohol sales, and concluded that the eighty-day sentence in this case was appropriate. In support of the trial court's conclusion, the state argues that Oyagak's rehabilitation potential was poor, because Oyagak denied that she sold Leavitt a bottle of Vodka. At sentencing, Oyagak stressed her innocence. It was proper for the trial court to consider Oyagak's attitude in evaluating her prospects for rehabilitation. The sentence is not clearly mistaken. See McClain v. State, 519 P.2d 811, 813-14 (Alaska 1974).

The judgment of the district court is AFFIRMED.

LESSON PLAN 8

ALASKA'S RIGHT TO PRIVACY: MARIJUANA TO COCAINE TO ALCOHOL

INTRODUCTION:

A nationwide issue is drug abuse. In Alaska, abuse of alcohol is an even more serious problem. The Alaska courts have discussed these problems in several decisions, with a special focus on Alaska's right to privacy.

The United States Constitution does not explicitly contain a right to privacy. Instead, the federal right to privacy has been derived from a broad reading of the due process clause of the Fourteenth Amendment, as well as other constitutional provisions. It has been applied in limited situations, such as the right to abortion, the right to choose one's spouse, the right to receive information about birth control, and the right to reproduce.

The right to privacy in the Alaska Constitution, on the other hand, is explicit and direct. Article I, section 22 of the Alaska Constitution reads, in part:

> The right of the people to privacy is recognized and shall not be infringed.

This express right is broader than that afforded by the United States Constitution.

In the area of privacy, the courts attempt to balance the individual's right to liberty with society's right to impose some limitation on individual liberty.

> [T]he framers of our constitution appear to have recognized a right of universal freedom and a right to be left alone which is rooted in the natural inclination of human beings. But these rights, in a free society such as ours, have never been recognized as absolute and without limitations. As Professor Bodenheimer points out:
>
> > It has been the experience of free societies that all liberties are liable to abuse by unscrupulous individuals and groups, and that they must therefore by subjected to certain restraints in the interest of the public weal.
>
> Because of this, it a function of this court to create a workable equilibrium and synthesis between the polar ideas of freedom and authority.

> In effect, there must be here a balancing of conflicting rights and interests. On the one hand, we have the express and unambiguous constitutional rights of free speech and privacy, which on their face would appear to admit no exceptions and which would prevent any restrictions by the legislature. On the other hand, we can envision an interpretation of these constitutional provisions which would allow the legislature, without any manifest need, to restrict or suspend these constitutional rights by a simple reference to the public interest. We cannot accept the latter, because then the constitutional guarantees would have little or no meaning. We also cannot accept the former, which may be referred to as libertarian absolutism, because absolute freedom of speech and absolute privacy in all situations and on all occasions would in certain instances be incompatible with the preservation of other rights essential in a democracy. [*Messerli v. State*, 626 P.2d 81, 83 (Alaska 1980)]

The most well known decision in this area is the unanimous opinion of the Alaska Supreme Court in *Ravin v. State*, 537 P.2d 494 (Alaska 1975). The court decided there that the state could not bar the personal use and possession of marijuana by an adult in the home. The court felt that in view of the relative harmlessness of the drug, the individual's right to privacy under the Alaska Constitution far outweighed the state's interest in regulation. In reaching this decision, the court made clear that it did not condone the use of marijuana and that it believed that the world would be a better place without the use of psychoactive substances.

In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), the court, again unanimously, upheld the legislature's prohibition of the use of cocaine, even in the home. Since cocaine is substantially more of a threat to health and welfare than is marijuana in that it sometimes causes anti-social behavior affecting the safety of others, the court found that the state could regulate its use, even in the home.

Both decisions mentioned the problems of alcohol abuse in Alaska. In *Ravin v. State*, the court noted that the effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol. In *State v. Erickson*, the court noted that its overall impression is that cocaine as presently used may be less harmful to the health and welfare of society than alcohol and, as to physical harm, tobacco.

OBJECTIVES:

Students will be able to:

1. Identify the provisions of the United States Constitution and the Alaska Constitution which guarantee the right to privacy.

2. Identify one difference between how the United States and Alaska courts interpret the constitutional right to privacy.

3. Identify the two conflicting goals the court considered in reaching its decision in *Ravin v. State*.

4. Identify one reason supporting their decision as to whether bringing alcohol into St. Mary's is protected by the right to privacy provision of the Alaska Constitution.

GRADE LEVEL: 10th to 12th grade

TIME TO COMPLETE: 2 hours

MATERIALS:

1. The attached handout, DRINKING IN ST. MARY'S.
2. An edited version of the court's decision in *Ravin v. State*.
3. For the teacher's information and possible use, edited versions of the courts' decisions in *State v. Erickson* and in *Harrison v. State*, 687 P.2d 332 (Alaska App. 1984).

PROCEDURE:

1. Poll the students on which is more dangerous to the health and safety of society: marijuana, cocaine, or alcohol.

2. Use a local attorney, or make a short presentation on the right to privacy, focusing on the broader right protected by the Alaska Constitution and on the inherent conflict between freedom and authority.

3. Pass out edited copies of the *Ravin v. State* decision, as well as copies of the attached handout, Drinking in St. Mary's. Instruct the students to read the decision in *Ravin v. State* first, and then to read the handout and begin to think about the answer

to the question at the end. Allow them to begin reading in class and finish reading at home.

4. Conduct a Socratic seminar. Remember, the teacher is not an expert or an advocate, but is instead a facilitator. Further questions may include:

> According to the decision in *Ravin v. State*, may a person create and drink homebrew/wine/beer in their own home? In a dry community where possession is banned?
>
> How important is the right to drink alcohol, as compared to other rights (such as the right to free speech, the right to vote, etc.)?
>
> Does the drinking of alcohol affect other persons?
>
> Is there a way that the health and safety of others can be protected which also allows those who wish to drink the right to do so?

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

DRINKING IN ST. MARY'S

On September 22, 1981, the voters of St. Mary's voted to prohibit the sale and importation of alcoholic beverages into their community. At the end of 1981, Hugh Harrison, an Alaska State Trooper, was transferred to St. Mary's. On April 16, 1982, Mr. Harrison flew an airplane from St. Mary's to Nome, where he purchased vodka and several cases of beer for his own personal consumption. He returned to St. Mary's with the liquor. Mr. Harrison's home was searched on April 18 and the alcohol was discovered. He was charged with importation of alcohol into a community which had banned its importation. He asked the court to dismiss the charge against him because the local option law violated his right to privacy.

According to the decision in *Ravin v. State*, is the bringing of alcohol into St. Mary's protected by the Alaska Constitution's right to privacy section?

Circle one: **YES** **NO**

Irwin RAVIN, Petitioner,
v.
STATE of Alaska, Respondent.
No. 2135.
Supreme Court of Alaska.
May 27, 1975.
As Amended May 28, 1975.

OPINION

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

RABINOWITZ, Chief Justice.

The constitutionality of Alaska's statute prohibiting possession of marijuana is put in issue in this case. Petitioner Ravin was arrested on December 11, 1972 and charged with violating AS 17.12.010.[1] Before trial Ravin attacked the constitutionality of AS 17.12.010 by a motion to dismiss in which he asserted that the State had violated his right of privacy under both the federal and Alaska constitutions, and further violated the equal protection provisions of the state and federal constitutions. Lengthy hearings on the questions were held before District Court Judge Dorothy D. Tyner, at which testimony from several expert witnesses was received. Ravin's motion to dismiss was denied by Judge Tyner. The superior court then granted review and after affirmance by the superior court, we, in turn, granted Ravin's petition for review from the superior court's affirmance.

[1] Here Ravin raises two basic claims: first, that there is no legitimate state interest in prohibiting possession of marijuana by adults for personal use, in view of the right to privacy; and secondly, that the statutory classification of marijuana as a dangerous drug, while use of alcohol and tobacco is not prohibited, denies him due process and equal protection of law.[2]

Thus, our undertaking is two-fold: we must first determine the nature of Ravin's rights, if any, abridged by AS 17.12.010, and, if any rights have been infringed upon, then resolve the further question as to whether the statutory impingement is justified.

As we have mentioned, Ravin's argument that he has a fundamental right to possess marijuana for personal use rests on both federal and state law, and centers on what may broadly be called the right to privacy. This "right" is increasingly the subject of litigation and commentary and is still a developing legal concept.[9]

In Alaska this court has dealt with the concept of privacy on only a few occasions. One of the most significant decisions in this area is *Breese v. Smith,*[19] where we considered the applicability of the guarantee of "life, liberty, the pursuit of happiness" found in the Alaska Constitution,[20] to a school hairlength regulation. Noting that hairstyles are a highly personal matter in which the individual is traditionally autonomous, we concluded that governmental control of personal appearance would be antithetical to the concept of personal liberty under Alaska's constitution. Since the student would be forced to choose between controlling his own personal appearance and asserting his right to an education if the regulations were upheld, we concluded that the constitutional language quoted above embodied an affirmative grant of liberty to public school students to choose their own hairstyles, for "at the core of [the concept of liberty] is the notion of total personal immunity from government control: the right 'to be let alone.' "[21] That right is not absolute, however; we also noted that this "liberty" must yield where it "intrude[s] upon the freedom of others."[22]

Subsequent to our decision in *Breese,* a right to privacy amendment was added to the Alaska Constitution. Article I, section 22 reads:

> The right of the people to privacy is recognized and shall not be infringed. The

legislature shall implement this section. The effect of this amendment is to place privacy among the specifically enumerated rights in Alaska's constitution. But this fact alone does not, in and of itself, yield answers concerning what scope should be accorded to this right of privacy.[23] We have suggested that the right to privacy may afford less than absolute protection to "the ingestion of food, beverages or other substances".[24] For any such protection must be limited by the legitimate needs of the State to protect the health and welfare of its citizens.[25]

This leads us to a more detailed examination of the right to privacy and the relevancy of where the right is exercised. At one end of the scale of the scope of the right to privacy is possession or ingestion in the individual's home. If there is any area of human activity to which a right to privacy pertains more than any other, it is the home. The importance of the home has been amply demonstrated in constitutional law. Among the enumerated rights in the federal Bill of Rights are the guarantee against quartering of troops in a private house in peacetime (Third Amendment) and the right to be "secure in their . . . houses . . . against unreasonable searches and seizures . . ." (Fourth Amendment). The First Amendment has been held to protect the right to "privacy and freedom of association in the home."[34] The Fifth Amendment has been described as providing protection against all governmental invasions "of the sanctity of a man's home and the privacies of life."[35] The protection of the right to receive birth control information in *Griswold* was predicated on the sanctity of the marriage relationship and the harm to this fundamental area of privacy if police were allowed to "search the sacred precincts of marital bedrooms."[36] And in *Stanley v. Georgia*,[37] the Court emphasized the home as the situs of protected "private activities". The right to receive information and ideas was found in *Stanley* to take on an added dimension precisely because it was a prosecution for possession in the home: "For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy."[38] In a later case, the Supreme Court noted that *Stanley* was not based on the notion that the obscene matter was itself protected by a constitutional penumbra of privacy, but rather was a "reaffirmation that 'a man's home is his castle.' "[39] At the same time the Court noted, "the Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, child rearing, and education."[40] And as the Supreme Court pointed out, there exists a "myriad" of activities which may be lawfully conducted within the privacy and confines of the home, but may be prohibited in public.[41]

[7] In Alaska we have also recognized the distinctive nature of the home as a place where the individual's privacy receives special protection. This court has consistently recognized that the home is constitutionally protected from unreasonable searches and seizures, reasoning that the home itself retains a protected status under the Fourth Amendment and Alaska's constitution distinct from that of the occupant's person.[42] The privacy amendment to the Alaska Constitution was intended to give recognition and protection to the home. Such a reading is consonant with the character of life in Alaska. Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states.

[8–11] The home, then, carries with it associations and meanings which make it particularly important as the situs of privacy. Privacy in the home is a fundamental right, under both the federal and Alaska constitutions. We do not mean by this that a person may do anything at anytime as long as the activity takes place within a person's home. There are two important limitations on this facet of the right to privacy. First, we agree with the Supreme Court of the United States, which has strictly limited the *Stanley* guarantee to possession for purely private, noncommercial use in the home. And secondly, we think this right must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Indeed, one aspect of a private matter is that it *is* private, that is, that it does not adversely affect persons beyond the actor, and hence is none of their business. When a matter does affect the public, directly or indirectly, it loses its wholly private character, and can be made to yield when an appropriate public need is demonstrated.

Thus, we conclude that citizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

This leads us to the second facet of our inquiry, namely, whether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general in the interest of public welfare; and further, whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

[12] The evidence which was presented at the hearing before the district court consisted primarily of several expert witnesses familiar with various medical and social aspects of marijuana use.[43] Numerous written reports and books were also introduced into evidence.[44]

Marijuana is the common term for dried leaves or stalk of the plant *Cannabis sativa L.* The primary psychoactive ingredient in the plant is delta-9-tetrahydrocannabinol (THC). Most marijuana available in the United States has a THC content of less than one percent. Other cannabis derivatives with a higher THC content, such as hashish, are available in the United States although much less common than is marijuana.

According to figures published by the National Commission on Marihuana and Drug Abuse[45] in 1973, an estimated 26 million Americans have used marijuana at least once. The incidence generally cuts across social and economic classes, though use is greatest among young persons (55% of 18–21 year-olds have used it). Only about 2% of the adults who have used it were classified by the National Commission as "heavy users" (more than once daily). The experience in Alaska seems to be similar. A report published in the Journal of the American Medical Association in 1971 indicated that 24% of Anchorage school children in grades six through twelve had used marijuana, as had 46% in grades eleven and twelve.[46]

Scientific testimony on the physiological and psychological effects of marijuana on humans generally stresses the variability of effects upon different individuals and on any one individual at different times. The setting and psychological state of the user can affect his responses. Responses also vary with the amount of marijuana one has used in the past. A new user, for instance, often feels no effects at all.

The short-term physiological effects are relatively undisputed. An immediate slight increase in the pulse, decrease in salivation, and a slight reddening of the eyes are usually noted. There is also impairment of psychomotor control. These effects generally end within two to three hours of the end of smoking.

Long-term physiological effects raise more controversy among the experts. The National Commission on Marihuana and Drug Abuse reported that among users "no significant physical, biochemical, or mental abnormalities could be attributed solely to their marijuana smoking."[47] Certain researchers have pointed to possible deleterious effects on the body's immune defenses,[48] on the chromosomal structures of users,[49] and on testosterone levels in the body.[50] The methodology of certain of these studies has been extensively criticized by other qualified medical scientists, however. These studies cannot be ignored. It should be noted that most of the damage suggested by these studies comes in the context of intensive use of concentrated forms of THC. It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco. But the studies suggesting dangers in intensive cannabis use do raise valid doubts which cannot be dismissed or discounted.

The immediate psychological effects of marijuana are typically a mild euphoria and a relaxed feeling of well-being. The user may feel a heightened sensitivity to taste and to visual and aural sensations, and his perception of time intervals may be distorted. A desire to become high can lead to a greater high; fear of becoming high or general nervousness can cause the user to fail to experience any high at all. In rare cases, excessive nervousness or fear of the drug can even precipitate a panic reaction. Occasionally a user will experience a negative reaction such as anxiety or depression, particularly when he takes in more of the substance than needed to achieve the desired high. However, in smoking marijuana, the usual method of taking it in this country, the user can self-titrate, or control the amount taken in, since the effect builds up gradually.

Additional short-term effects are an impairment of immediate-past-memory facility and impairment in performing psychomotor tasks. Experienced users seem less impaired in this regard than naive users.

In extremely rare instances, use of marijuana has been known to precipitate psychotic episodes; however, the consensus of the experts seems to be that the potential for precipitating psychotic episodes exists only for a limited number of prepsychotic persons who could be pushed into psychosis by any number of drug or nondrug-related influences.

There is considerable debate as to the long-term effects of marijuana on mental functioning. Certain researchers cite evidence of an "amotivational syndrome" among long-term heavy cannabis users. However, the main examples of this effect are users in societies where large segments of the population exhibit such traits as social withdrawal and passivity even without drug use. The National Commission concludes that long-time heavy users do not deviate significantly from their social peers in terms of mental functioning, at least to any extent attributable to marijuana use.[51]

The experts generally agree that the early widely-held belief that marijuana use directly causes criminal behavior, and particularly violent, aggressive behavior, has no validity. On the contrary, the National Commission found indications that marijuana inhibits "the expression of aggressive impulses by pacifying the user, interfering with muscle coordination, reducing psychomotor activities and generally producing states of drowsiness, lethargy, timidity and passivity."[52] Moreover, the Commission and most other authorities agree that there is little validity to the theory that marijuana use leads to use of more potent and dangerous drugs. Although it has been stated that the more heavily a user smokes marijuana, the greater the probability that he has used or will use other drugs, "it has been suggested that such use is related to 'drug use proneness' and involvement in drug subcultures rather than to the characteristics of cannabis, *per se*."[53]

The most serious risk to the public health discerned by the National Commission is the possibility of an increase in the number of heavy users, who now constitute about 2% (500,000) of those who have used the drug. Within this group certain emotional changes have been observed among "predisposed individuals" as a result of prolonged heavy use. This group seems to carry the highest risk, particularly in view of the risk of retarding social adjustment among adolescents if heavy use should grow.

Most authorities have accepted the theory that marijuana users develop a "reverse tolerance", that is, that a moderate user needs less and less marijuana over time to achieve a high. Recent research indicates that this may be true only up to a point, and that beyond a certain intensity of use a true tolerance begins to develop.[54] If true, this may be relevant regarding only heavy use of concentrated forms of cannabis, since marijuana use is self-limiting due to the forms in which it is taken.

The National Commission rejected the notion that marijuana is physically addicting. It also rejected the notion that marijuana as used in the United States today presents a significant risk of causing psychological dependency in the user. Rather, the experimental or intermittent user develops little or no psychological dependence. Lengthy use on a regular basis does present a risk of such dependence and of subsequent heavier use, and strong psychological dependence is characteristic of heavy users in other countries. This pattern of use is rare in the United States today, however.

While there is no confirmed report of a human ever having died from an overdose of cannabis, the toxic levels of THC have been determined from tests on animals. The lethal dose for marijuana is approximately 40,000 times the dose needed to achieve intoxication. The equivalent ratio of intoxicating to lethal doses for alcohol is 4/10 and for barbiturates is 3/50.

The number of persons arrested for marijuana possession has climbed steeply in recent years. In 1973, over 400,000 marijuana arrests occurred, a 43% rise over the previous year. It should also be noted that 81% of persons arrested for marijuana-related crimes have never been convicted of any crime in the past, and 91% have never been convicted of a drug-related crime.[55]

The justifications offered by the State to uphold AS 17.12.010 are generally that marijuana is a psychoactive drug; that it is not a harmless substance; that heavy use has concomitant risk; that it is capable of precipitating a psychotic reaction in at least individuals who are predisposed towards such reaction; and that its use adversely affects the user's ability to operate an automobile. The State relies upon a number of medical researchers who have raised questions as to the substance's effect on the body's immune system, on chromosomal structure, and on the functioning of the brain. On the other hand, in almost every instance of reports of potential danger arising from marijuana use, reports can be found reaching contradictory results. It appears that there is no firm evidence that marijuana, as presently used in this country, is generally a danger to the user or to others. But neither is there conclusive evidence to the effect that it is harmless.[56] The one significant risk in use of marijuana which we do find established to a reasonable degree of certainty is the effect of marijuana intoxication on driving. We shall return to this aspect of the problem later in this opinion.

Possibly implicit in the State's catalogue of possible dangers of marijuana use is the assumption that the State has the authority to protect the individual from his own folly, that is, that the State can control activities which present no harm to anyone except those enjoying them. Although some courts have found the "public interest" to be broad enough to justify protecting the individual against himself,[57] most have found inherent limitations on the police power of the state. An apposite example is the litigation regarding the constitutionality of laws requiring motorcyclists to wear helmets. Most of the courts addressing the issue, including this one, have resolved it by finding a connection between the helmet requirement and the safety of other motorists,[58] but a significant number of courts have explicitly rejected such restrictive measures as beyond the police power of the state because they do not benefit the public.[59] Typical of the logic of these latter cases is the dissent of Justice Abe in *State v. Lee,*[60] in which the Hawaii Supreme Court upheld a motorcycle helmet requirement despite finding no clear link between lack of the equipment by the motorcyclist and injury to others. The court reasoned that where a person's conduct is so reckless, and the resulting injury and death are so widespread as to be of concern to the public, then the conduct affects the public interest and is within the scope of the police power. Justice Abe dissented, citing a general right to be left alone or liberty to do as you please. There has to be a genuine harm to others, he wrote, to justify such controls; a state cannot simply decide what is in a person's best interest and compel it.[61]

[13, 14] We glean from these cases the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large[62] as it relates to matters of public health or safety, or to provide for the general welfare. We believe this tenet to be basic to a free society. The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. The right of the individual to do as he pleases is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others.[63]

[15, 16] Further, the authority of the state to control the activities of its citizens is not limited to activities which have a present and immediate impact on the public health or welfare. It is conceivable, for example, that a drug could so seriously develop in its user a withdrawal or amotivational syndrome, that widespread use of the drug could significantly debilitate the fabric of our society. Faced with a substantial possibility of such a result, the state could take measures to combat the possibility. The state is under no obligation to allow otherwise "private" activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare. But we do not find that such a situation exists today regarding marijuana. It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol, barbiturates and amphetamines. Moreover, the current patterns of use in the United States are not such as would warrant concern that in the future consumption patterns are likely to change.[64]

[17-19] Research is continuing extensively. Scientific doubts persist, however, and that fact has significance for our application of the law. It is a long-standing rule of law that statutes designed to protect the public health will receive a liberal construction.[65] We have seen repeated examples in recent years where scientific doubts as to the safety of various products, drugs, or environmental conditions have been held to justify controls. There is a presumption in favor of public health measures; when there is substantial doubt as to the safety of a given substance or situation for the public health, controls intended to obviate the danger will usually be upheld.

But one way in which use of marijuana most clearly does affect the general public is in regard to its effect on driving. All of which brings us to the opposite (from the home) end of the scale of the right to privacy in the context of ingestion or possession of marijuana, namely, when the individual is operating a motor vehicle. Recent research has produced increasing evidence of significant impairment of the driving ability of persons under the influence of cannabis.[66] Distortion of time perception, impairment of psychomotor function, and increased selectivity in attentiveness to surroundings apparently can combine to lower driver ability.[67] In this regard, Ravin points out that marijuana usually produces passivity and inactivity, in contrast to alcohol, which increases aggressiveness and is likely to result in overconfidence in one's driving ability. Although a person under the influence of marijuana may be less likely to attempt to drive than a person under the influence of alcohol, there exists the potential for serious harm to the health and safety of the general public.[68]

[20-24] In view of the foregoing, we believe that at present, the need for control of drivers under the influence of marijuana and the existing doubts as to the safety of marijuana, demonstrate a sufficient justification for the prohibition found in AS 17.12.010 as an exercise of the state's police power for the public welfare. Given the evidence of the effect of marijuana on driving an individual's right to possess or ingest marijuana while driving would be subject to the prohibition provided for in AS 17.12.010. However, given the relative insigificance of marijuana consumption as a health problem in our society at present, we do not believe that the potential harm generated by drivers under the influence of marijuana, standing alone, creates a close and substantial relationship between the public welfare and control of ingestion of marijuana or possession of it in the home for personal use. Thus we conclude that no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice.

The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes.[69] Further, neither the federal or Alaska constitution affords protection for the buying or selling of marijuana, nor absolute protection for its use or possession in public. Possession at home of amounts of marijuana indicative of intent to sell rather than possession for personal use is likewise unprotected.[70]

In view of our holding that possession of marijuana by adults at home for personal use is constitutionally protected, we wish to make clear that we do not mean to condone the use of marijuana. The experts who testified below, including petitioner's witnesses, were unanimously opposed to the use of any psychoactive drugs. We agree completely. It is the responsibility of every individual to consider carefully the ramifications for himself and for those around him of using such substances. With the freedom which our society offers to each of us to order our lives as we see fit goes the duty to live responsibly, for our own sakes and for society's. This result can best be achieved, we believe, without the use of psychoactive substances.

CONNOR, Justice (concurring).

I concur in the majority opinion and the separate concurring opinion of Justice BOOCHEVER, but wish to add some observations.

The decision today properly leaves unanswered the question of how far the right to privacy, in connection with the possession of marijuana, extends outside the home. Such a determination can be made only when we are presented with specific facts against which the individual's claim of privacy can be measured, as opposed to the state's assertion of power to control the possession of marijuana. Under the test we have employed in determining the scope of the right to privacy, it is necessary to balance these conflicting claims and determine whether the state's prohibition bears a direct and substantial relationship to effectuating a legitimate state interest.

The record in the case before us does not contain facts about the particular circumstances in which appellant possessed marijuana. Accordingly, we must remand the case for further elucidation of the facts.

It is certain that the right to privacy does not vanish when one leaves the home.[1] There are certain aspects of personal autonomy which one carries with him even when he ventures out of the home, though the claim to privacy diminishes in proportion to the extent that one's person and one's activities impinge upon other persons. But, in order to trace the contours of the right to privacy, it will be necessary to engage in a critical analysis of the facts of each case which presents itself for decision. Only in this fashion can the right to privacy, outside the home, be determined on a reasoned, coherent basis so as to furnish the courts and the public with reliable rules of action. Much definitional work, therefore, remains to be done in the cases yet to be determined.

STATE of Alaska, Appellant,

v.

James Edward ERICKSON, Jeffrey Mueller, David Andrew Laschober, Albert Vasconcellos, Anthony C. Phillips, Fred J. McVicker and Douglas Sopko, Appellees.

No. 3250.

Supreme Court of Alaska.

Jan. 20, 1978.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

OPINION

BOOCHEVER, Chief Justice.

The validity of Alaska laws prohibiting possession and sale of cocaine are questioned in these appeals, and we are presented with difficult questions involving the equal protection and due process clauses of the United States[1] and Alaska[2] Constitutions and the right to privacy.[3]

Is criminalization of the personal use and possession of cocaine in the home an invalid infringement on the right to privacy?

NATURE AND EFFECTS OF COCAINE

Cocaine is a naturally occurring stimulant drug produced from the leaves of the coca bush, primarily from *Erythroxyion coca*, a species of flowering plant indigenous to the western hemisphere. The coca plant's natural environment is the hot, humid eastern slope of the Andes Mountains. It grows principally in Bolivia and Peru, although it may be found as far south as Chile and as far north as Colombia and Venezuela. Cocaine is an alkaloid which must be extracted from coca. While cocaine's history covers little more than a hundred years, the use of coca can be traced to at least the 6th Century A.D. It had religious significance to the Incas.[30] Early use in South America was confined to chewing the leaves in a mixture of lime substance, and it is still widely used in this manner by Bolivian and Peruvian Indians. Allegedly, it has enabled the Indians to work under arduous conditions at high altitudes with inadequate diets. Coca leaves contain one-half to one percent cocaine, and oral ingestion results in a slower release of its effects than when the drug is taken by other means.[31]

Cocaine was successfully isolated and extracted in the 1880's. Initially, the new drug was greeted with great enthusiasm in Europe and in the United States. It was used as a local anesthetic particularly in eye, nose and throat surgery because it constricted blood vessels limiting bleeding in surgery. Also, cocaine became an ingredient in several patent medicine cure-alls, as well as in the original formula for Coca-Cola.

As with most recent "wonder drugs," initial widespread acceptance was increasingly tempered by the recognition that cocaine had undesirable side effects and could pose a severe health hazard.[32] Concern over the excesses of use of patent medicines utilizing cocaine became manifest with the emergence of higher standards for the practice of medicine. While many of its medical uses have been abandoned, cocaine continues to have some use as a local anesthetic.

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[3] Article I, section 22 of the Alaska Constitution states in part:

> *Right of Privacy.* The right of the people to privacy is recognized and shall not be infringed. . . .

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It is undisputed that cocaine is not a narcotic under the pharmacological definition of the term. The term "narcotic" derives from the Greek word for numbness or stupor.[33] Narcotics are central nervous system depressants which create a physical dependence liability in the user. Opiates are a class of narcotics which tend to reduce and relieve pain. Narcotic use is characterized by tolerance, the need for increasing doses over time to maintain the same pharmacological effects, and by withdrawal—a pattern of symptoms appearing when an habitually-taken drug is discontinued suddenly and relieved when the drug is reinstated. Narcotics are not self-limiting. Given an unlimited supply, the user can take the drug continuously. Narcotics, such as the opiates, act on an opiate receptor site in the brain. There is also a cross tolerance effect to opiates, meaning that any opiate can relieve abstinence syndrome created by dependence on another opiate.

The general motivations for opiate use are escape and an attempt to close out the rest of the world. Depressants are generally used by those who are seeking to disconnect themselves from their environment. Opiates are usually taken intravenously by needle.

The chemical structure of cocaine is unlike that of opiates, and it is not associated with tolerance or withdrawal syndrome. In contrast to opiates, cocaine is a stimulant. It produces an euphoria, a sense of intense stimulation and of psychic and physical well-being, accompanied by a reduced fatigue. There is scientific evidence that, when taken in moderate doses, it increases heart rate and blood pressure. It is not physically addictive and is generally considered less harmful than heroin or alcohol.

The non-medical use of cocaine occurs primarily by inhaling or "snorting" through the nose. A less common method of use is intravenous injection into the blood stream. The effects of the drug are rapid but of short duration. If injected, its major effects are generally dissipated after ten minutes; and, if taken nasally, after a half hour.

Users generally believe that it is safe and relatively free of undesirable side effects. Cocaine use does have adverse effects, however, even in small doses. When "snorted," it may cause inflammation of the nasal membranes. Intravenous injection is more dangerous, primarily because of the risks attendant with use of needles. Larger doses and heavier use by any method pose more significant risks. Dr. Petersen, in his article, "Cocaine: An Overview," states:

> Its reputation for safety may be overstated since it is based on low doses taken relatively infrequently. Under conditions of heavier, more frequent use, adverse consequences may be considerably more common than generally believed.[34]

There is, apparently, wide individual variation in the psychological and physiological effects. With heavier use, a cocaine psychosis similar to paranoid schizophrenia has been described in scientific literature; and Dr. Andrew Weil indicated that cocaine can cause a toxic psychosis. Tactile hallucinations, involving a sensation of insects under the skin, is a common aspect of such cases. Paranoid delusions have been described, including fear of imaginary authority figures or a belief that one is being watched.[35]

Dr. Weil, in testifying about an adverse change in attitude toward cocaine that occurred in the latter part of the 19th Century, stated that, in a period of indiscriminate use, some individuals had very bad reactions to cocaine and became very anxious or excited or paranoid. "Some people went crazy briefly upon the administration of high doses of cocaine." He indicated that this occurred only in a small minority of those using cocaine but that it was a spectacular adverse effect. Indeed, it has been noted that:

> Apart from clinical description and case reports, however, there have still been no systematic controlled studies to determine the level and frequency of cocaine use which leads to serious, adverse psychic effects such as those described. It is not known how common such paranoid symptoms are at various levels of use, the degree to which individual personality differences contribute to their development or whether they are a consequence of use if large enough quantities are used over a sufficiently extended period. Because present American use patterns are characterized by relatively in-frequent use of small quantities of the drug, serious adverse effects of use may be quite rare. In one recent study of recreational users 85 regular users (1 gram per month or more) recruited by means of newspaper ads were studied. None of these subjects were compulsive users in the sense described in the earlier literature. Although their self-reported experiences were generally positive (e. g., all reported euphoria in connection with use), negative effects were also indicated, such as restlessness, anxiety, hyper-irratability, and . . . paranoia. In this study, positive effects were reported on all occasions of use, with negative consequences experienced in 3–5 percent of them.[36]

Unlike marijuana, cocaine can cause death as a direct effect of its pharmacological action. Researchers in 1976 and 1977 collected data about cocaine-related deaths at twenty-seven study sites in the United States and Canada according to an article in the National Institute on Drug Abuse's Monograph on cocaine.[37] In that study of 62.9 million people, there were 111 fatalities in which cocaine apparently played a part; however, only twenty-six of the fatalities were attributable solely to cocaine.[38] The number of fatalities per year has increased markedly, however, probably as a result of increased usage.[39] Dr. Weil testified that, although the risk of death from central nervous system stimulants such as cocaine is a tiny fraction of the risk created by central nervous system depressants, such a result can occur under unusual circumstances.[40]

Dr. Sanford J. Feinglass, who testified for the defendants, indicated that the National Commission on Marijuana and Drug Abuse, for which he served as consultant, considered that alcohol is the drug with the greatest potential for abuse, followed by opiates and barbituates. The Commission rated cocaine as having a slightly higher potential for abuse than amphetamines, followed by marijuana, LSD and mescaline in descending propensity for abuse. Tobacco was not included in the scope of the Commission's work.

He believed that it was possible for a user of cocaine to develop a toxic psychosis but that the incidence would be extremely low. He stated that it was possible to have a lethal dose of cocaine. He testified as to reports of destruction or apparent destruction of the nasal mucosa with some associated bleeding and scabbing.

While cocaine has been anecdotally related to aggressive or criminal conduct, adequate evidence to assess its possible impact in these areas is absent.[41] Aside from the criminality involved in violation of drug laws, we have found no reliable scientific evidence linking cocaine usage to criminal conduct, although there is some indication that its stimulant effect may create a potential for crime and violence.[42]

Oddly enough, no tests seem to have been made as to the effects of cocaine on driving—one area in which it has been clearly shown that marijuana has adverse effects.[43] Dr. Weil was of the opinion that one who had experience with the effects of cocaine would drive normally but that one inexperienced with its use might have his driving ability impaired.

There is a dispute in the evidence pertaining to whether cocaine is psychologically addictive.[44] Dr. Weil testified:

> There is no question that people can be dependent on cocaine. I think that those people[45] were dependent on cocaine in the sense that a large proportion of their working energy went towards getting and using cocaine.

An appraisal of the effects of cocaine use is made difficult by the differing views expressed, ranging from those of ardent advocates to those of persons condemning it as one of the most demonic of drugs. The attitudes pertaining to the drug have seen dramatic shifts during different periods of time, as well as sharp reversals of opinion by individuals. For example, the Spaniards, upon discovering the use of coca leaves by the Incas, initially condemned it but later strongly advocated its use by the subjugated Indians because of its apparent effect in aiding arduous work.[46] Dr. Sigmund Freud, who had earlier used cocaine himself and considered it a wonder drug, became concerned after seeing a friend develop a cocaine psychosis. The friend, Ernst von Fleischl-Marxow, had an earlier morphine dependency which he tried to overcome with cocaine.[47] Many modern scientists have substantially changed their views pertaining to the drug, now believing it to be less harmful than previously conceived.[48]

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[44] Dr. Weil, in affidavit, stated that:

> . . . Cocaine does not produce a physiological dependence in the manner of opiates or alcohol or barbituates. While its regular use can be described as a habit, that habit is not as difficult to break as the habits that form around the uses of drugs like tobacco and coffee.

Dr. Paul Lowinger, in affidavit, said that cocaine ". . . can be habituating, although it is less so than the amphetamines." Dr. Robert G. Newman, in affidavit, stated that:

> [c]ocaine does not cause physical dependence, even when used repeatedly and in large doses. Withdrawal symptoms do not result when a heavy user abruptly discontinues cocaine intake.

Dr. Richard Kunnes said that "Cocaine . . . is nonaddictive, with the user neither physically nor psychologically being tied to the drug."

[45] By "those people," Dr. Weil was referring to persons previously addicted to morphine who were given cocaine therapy by the medical profession. He pointed out that American doctors around the time of the Civil War had created a class of morphine-dependent persons and attempted to alleviate the addiction by routine treatments with cocaine.

Our review of sources concerning the drug indicate that there is still much to be learned. Many of the texts are singularly anecdotal and unscientific. Obtaining a true scientific evaluation is made tremendously difficult by the variations in methods of use, the relative purity of the drug, the manner in which it is combined with other substances, and the physical and psychological attributes of the user. A more intensive scientific analysis appears to be evolving at the present time; and a number of works have been published in the past year, indicating a more realistic appraisal.[49] The recently-issued Monograph, prepared by the National Institute on Drug Abuse, is an excellent consideration of the more advanced and scientific evaluations.[50]

Effects of Cocaine:

The testimony introduced at the trial generally painted the picture of cocaine as a relatively benign drug. Yet, giving due deference to the trial judge's appraisal of the witnesses, we find sufficient evidence of potential for harm to justify inclusion of cocaine with opiates.

Dr. Andrew Weil indicated in his testimony that, with indiscriminate use, some individuals had very bad reactions to cocaine, including anxiety and paranoia; that people can be dependent on cocaine; that cocaine can cause toxic psychosis and death under unusual circumstances; that there is cause for concern over the recent increase in use of cocaine; [94] and that the potential for abuse between cocaine and amphetamines is similar.

In fairness, we hasten to point out that those adverse comments pertaining to the drug have been culled from Dr. Weil's entire testimony which over-all gives the impression of a drug involving minor adverse problems, less than those resulting from the use of either alcohol or tobacco.[95]

Dr. Sanford J. Feinglass, also a defense witness, gave similar testimony regarding cocaine's potential for harm and rated it as having a slightly higher potential for abuse than amphetamines.

Looking to sources other than the testimony at trial, the following indications of harmfulness are summarized from the National Institute of Drug Abuse's Monograph: [96]

1. Although cocaine as typically used in the United States at present poses only a limited hazard, it can be physically dangerous in ways that marijuana cannot.[97] Unlike marijuana, cocaine can cause death as a direct effect of the pharmacological action of the drug.[98]

2. In studies of animals, when aggression has been elicited by environmental events, cocaine may increase or decrease the aggression.[99] A reasonable conclusion from animal research that is applicable to humans is the fact that severe cocaine intoxication is self-induced when the intravenous route of administration is used and access to the drug is unlimited.[100]

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[94] With reference to increased usage of cocaine, he stated:

> I think there are certain reasons for concern. I happen to be in favor of responsible use of drugs and in favor of social controls of drug use, that is, I think that . . . the more people we have in our society who use drugs irresponsibly and unconsciously, I think that those are health problems and—and societal problems so I think when any new drug begins to spread that there is always some cause for concern about whether people are going to learn how to use it intelligently. So
>
> I am watching what's happening with cocaine and I'm interested to what's happening. . . . I don't think it's a plague or a scourge but I think it's a matter . . . to watch and see what happens with it.

[95] The American Cancer Society estimates 89,000 deaths will be caused by lung cancer in 1977, of which 80 percent will be related to cigarettes. American Cancer Society, "1977 Cancer Facts and Figures" at 19. Dr. Luther Terry, former Surgeon-General of the United States, has estimated that 250,000 deaths are caused or contributed to annually by cigarette smoking. These and other statistics regarding the societal harm caused by tobacco are cogently stated in Notes and Comment, "The Talk of the Town," The New Yorker (June 27, 1977).

3. Most researchers agree that the pleasurable effects diminish with continued use of cocaine and are replaced by an increasing number of adverse effects which can only be alleviated through its cessation.[101]

4. One of the most consistent findings is that prolonged and excessive use is associated with tactile hallucinations of animals, bugs or insects moving under the skin.[102]

5. Chronic users can experience negative effects, such as nervousness and irritability, perceptual disturbances, nasal problems, situational sexual impotency and fatigue or lassitude when the effects abate. These effects were experienced in approximately five percent of the intoxications.[103]

6. The toxicity of cocaine approximately parallels that of amphetamines and is manifested by depressions, psychological dependence upon cocaine,[104] acute anxiety reactions to cocaine and cocaine psychosis.[105] The drug is viewed as one of moderately high abuse similar to that of amphetamines.

> However, if the drug were more readily available at a substantially lower cost, or if certain socio-cultural rituals endorsed and supported the higher dose patterns, more destructive patterns of abuse could develop.[106]
>
> Cocaine is not a benign drug, a fact which is clearly supported by its known pharmacology.[107]

RIGHT TO PRIVACY

[12] In *Ravin v. State*,[134] this court held that the state could not bar the personal use and possession of marijuana in the home. In view of the relative harmlessness of the drug, the individual's right to privacy under the Alaska Constitution was found to outweigh the state interest in regulation. Defendants contend that the reasoning of *Ravin* also applies to the non-commercial use and possession of cocaine and additionally argue that the constitutional right to privacy guarantees some reasonable access to the drug for personal and social use. The right to privacy argument is urged as an alternative ground for upholding the dismissal of the indictments.

We pointed out in *Ravin*, however, that:

> We do not mean by this that a person may do anything at anytime as long as the activity takes place within a person's home. There are two important limitations on this facet of the right to privacy. First, we agree with the Supreme Court of the United States, which has strictly limited the *Stanley* [*v. Georgia*, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969),] guarantee to possession for purely private, non-commercial use in the home. And secondly, we think this right must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely.[135]

The question presented to us is thus whether the effects of cocaine are sufficiently similar in lack of harmfulness to marijuana so as not to be a serious hazard to health and welfare. With reference to marijuana, we stated in *Ravin*:

> It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco.[136]

We have found no authorities which state that the effects of cocaine are less harmful than marijuana, and it seems clear that cocaine is substantially more of a threat to health and welfare.[137] Unlike marijuana, cocaine can cause death as a direct effect of the pharmacological action of the drug.[138]

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Grinspoon and Bakalar in their recently published work *Cocaine: A Drug and Its Social Evolution*, have a chapter on the "Abuse Potential of Coca and Cocaine: The Policy Debate." They state:

> Considering only its psychopharmacological effects, we can say that cocaine certainly has some potential for producing crime and violence.[139]

They indicate that cocaine can have similar effects to amphetamines, which they clearly relate to aggressive behavior,[140] although cocaine is probably less dangerous than alcohol, barbiturates or amphetamines.[141] The authors list seven potential types of harm resulting from the use of cocaine, namely: acute psychological effects, acute physical effects, chronic psychological effects, chronic physical effects, crime and violence, loss of psychomotor control and an economic and social burden on society.[142] The summary indicates a substantial potential for harm, although that potential is significantly reduced in situations of occasional social use by inhalation.

[13] We find that there is a sufficiently close and substantial relationship between the means chosen to regulate cocaine and the legislative purpose of preventing harm to health and welfare so as to justify the prohibition of use of cocaine,[143] even in the home. Having so concluded, it follows that we reject counsel's argument that the right of privacy permits reasonable access to the drug for personal and social use.[144]

CONCLUSION

We conclude

that criminalization of the personal use and possession of cocaine in the home does not constitute an invalid infringement on the right of privacy.[145]

In deciding the issues in this case, we have carried out our traditional appellate functions with a keen appreciation of the limits that the doctrine of separation of powers places on the judicial branch. Nevertheless, we do recommend that the legislature review its treatment of cocaine in light of modern scientific evidence.

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142. *Id.* at 228–29:

> (1) Acute psychological effects: psychosis seems to be rare in recreational use, at least among sniffers; the crash is apparently not so hard a landing as the amphetamine crash; the most common problems are insomnia, irritability, and anxiety;
>
> (2) Acute physical effects: overdose death is apparently rare, although this judgment must be qualified by reference to drug mixtures and inadequate reporting; deaths in surgery were at one time more common than deaths on the street, or perhaps only better reported; severe nonfatal acute poisoning from sniffing is probably rare, from injection not so rare; alcohollike or barbituratelike loss of motor control does not occur;
>
> (3) Chronic psychological effects: cases of demoralization and general deterioration with periodic psychoses, like those described by literary men and physicians in the early years of the twentieth century, are apparently less common today but would presumably be more so if cocaine were more freely available;
>
> (4) Chronic physical effects: the most common ones today are rhinitis and weight loss; if the drug were more freely available there would probably be some abuse causing serious malnutrition and debilitation; evidence of brain damage in coca chewers is inconclusive and not based on any observed organic pathology;
>
> (5) Crime and violence: we have discussed this. . . .
>
> (6) Loss of psychomotor control leading to accidents that hurt others: as we have implied, cocaine in acute doses would rarely cause this, although the overreaction of a paranoid abuser to a fancied persecution might have a similar result;
>
> (7) Economic and social burden: insofar as it is possible to estimate this at all, we are inclined to say that cocaine would not become as great a social problem as many other less restricted potentially dangerous instruments, pharmacological and other.

Hugh HARRISON, Appellant,

v.

STATE of Alaska, Appellee.

No. 7407.

Court of Appeals of Alaska.

Aug. 31, 1984.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

BRYNER, Chief Judge.

Following a jury trial, Hugh Harrison was convicted of importing alcohol into the village of St. Mary's in violation of AS 04.11.496(b). On appeal, Harrison challenges the constitutionality of Alaska's local option law, arguing that it violates the equal protection and due process clauses of the United States and Alaska Constitutions and the privacy clause of the Alaska Constitution. Harrison also challenges his conviction on *ex post facto* grounds. After reviewing Harrison's claims, we conclude that his conviction must be affirmed.

In order to place Harrison's arguments in context, it is helpful to review the background of Alaska's local option law. Alcohol abuse has been and continues to be a problem in Alaska. A comprehensive study of this issue was released in 1977 by the Analysis of Alcohol Problems Project. Several of the study's conclusions illustrated the extent of alcohol problems in Alaska. For example, Alaska's rate of death due directly to alcoholism increased 153% from 1959 to 1975, and Alaska's alcoholism mortality rate in 1975 was 418% higher than the national average. Analysis of Alcohol Problems Project, *Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975,* vol. V at 14 (1977). From 1958 to 1975, Alaska's rate of annual consumption increased at almost twice the rate of the national average. *Id.* at 42. The total economic cost of alcoholism and alcohol abuse to Alaska in 1975 was reported to be 131.2 million dollars. *Id.* at 32. The study noted that the impact of alcohol-related problems was greater in rural areas. *Id.* at 4.

In 1976, the Governor's Commission on the Administration of Justice concluded that crime in Alaska is significantly related to the excessive and unregulated consumption of alcohol. Governor's Commission on the Administration of Justice, *Standards and Goals for Criminal Justice* at 41 (1976). The Commission noted that, according to the National Council on Alcoholism, one out of every ten Alaskans is an alcoholic. *Id.* The Commission recommended that rural villages be allowed to control alcoholic beverages. *Id.* at 14.

In 1980, the Alaska Judicial Council published a report entitled *Alaska Felony Sentences: 1976–1979.* The report found a significant relationship between the use of alcohol and criminal behavior. This association was most significant in rural areas of the state where, according to the Council, 77.9% of violent crimes and 55.6% of property crimes were committed under the influence of alcohol. Alaska Judicial Council, *Alaska Felony Sentences: 1976–1979* at 45–48, 65–67 (1980).[1]

In response to the growing evidence of a strong relationship between alcohol abuse and crime, Alaska's local option law was enacted in 1980. Under the law, any municipal government that desires to regulate the importation or distribution of alcoholic beverages can conduct a referendum election. A community choosing to hold a referendum election is given several options. It may completely prohibit the sale of alcoholic beverages, AS 04.11.490. It may prohibit the sale except by specifically licensed establishments, AS 04.11.492, or by those holding selected types of licenses, AS 04.11.500. Or, it may completely prohibit both the sale and importation of alcoholic beverages, AS 04.11.496. Local referendum elections are conducted under state supervision, and when the results of a local election are certified by the state, violations of any restrictions adopted in the election are subject to criminal prosecution by the state. AS 04.11.502; AS 04.16.200.

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[1] In 1981, the House Task Force on Violent Crime was established to examine the causes of violent crime. The Task Force began by holding public hearings throughout the state; it reported:

> Another dominant theme in the testimony was the relationship between violent crime and alcohol abuse. Police, prosecutors, judges, community leaders and victims testified that alcohol abuse and violent crime are inseparable.

House Task Force on Violent Crime, *Report to the First Session Twelfth Alaska Legislative* at 8–9 (1981).

The village of St. Mary's held a referendum election under the local option law on September 22, 1981, and voted to prohibit the sale and importation of alcoholic beverages. The prohibition became effective October 1, 1981. During the latter part of 1981, Harrison, a state trooper, was transferred to St. Mary's. On April 16, 1982, Harrison flew an airplane from St. Mary's to Nome, where he purchased vodka and several cases of beer. He returned to St. Mary's with the liquor. The police searched Harrison's residence on April 18th and found over sixty-two liters of beer and 1.75 liters of vodka. Harrison was indicted for the importation of alcohol, in violation of AS 04.11.496(b).[2] AS 04.11.496 provides, in relevant part:

> (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 04.11.502: "Shall the sale and importation of alcoholic beverages be prohibited in . . . (name of municipality or village)? (yes or no)".
>
> (b) If a majority of the voters vote "yes" on the question set out in (a) of this section, a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring alcoholic beverages into the municipality or established village.

Prior to trial, Harrison moved to dismiss his indictment on constitutional grounds. He argued that the St. Mary's local option law violated his right to privacy and equal protection and that the distinction between the misdemeanor and felony classifications in the statute violated his right to due process. Harrison also contended that the application of the local option law to his conduct violated the constitutional prohibition against *ex post facto* laws. At the pretrial hearing before Superior Court Judge James R. Blair, Harrison expressly acknowledged the evidence presented by the state indicating a correlation between alcohol abuse and serious health and social problems. Harrison did, however, present expert testimony that the incidence of coronary disease was lower among moderate drinkers than non-drinkers. Harrison's expert also testified that an increased availability of alcohol results in a proportional increase in moderate drinkers and a proportional decrease in heavy users and abstainers. Judge Blair denied Harrison's motions to dismiss. Harrison was subsequently convicted, and now appeals the denial of his motions.

PRIVACY

Harrison claims that the prohibition against importation of alcohol into St. Mary's violates his right to privacy under the Alaska Constitution.[3] In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the defendant argued that the prohibition of the possession of marijuana violated his right to privacy. The court in *Ravin* noted the traditional standard that applied to a claimed infringement of a fundamental constitutional right:

> Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right

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[2] Harrison was also indicted on two other charges, which are not relevant to this appeal.

[3] Article I, section 22 of the Alaska Constitution states in part:

> *Right of Privacy.* The right of the people to privacy is recognized and shall not be infringed....

> has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgement in question was justified by a compelling government interest.

Ravin, 537 P.2d at 497 (footnote omitted) (quoting *Breese v. Smith*, 501 P.2d 159, 171 (Alaska 1972)). However, the court expressed considerable dissatisfaction with the traditional fundamental right/compelling state interest test. *Ravin*, 537 P.2d at 498. The court went on to determine Ravin's privacy claims in the following manner:

> It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear a substantial relationship to the legislative purpose. If governmental restrictions interfere with the individual's right to privacy, we will require that the relationship between means and ends be not merely reasonable but close and substantial.
>
> Thus, our undertaking is two-fold: we must first determine the nature of Ravin's right, if any, abridged by [the statute prohibiting possession of marijuana], and, if any rights have been infringed upon, then resolve the further question as to whether the statutory impingement is justified.

Ravin, 537 P.2d at 498.

The court in *Ravin* held that even if it were to use the fundamental right/compelling state interest test, there was no fundamental right, either under the Alaska or federal constitutions, to possess or ingest marijuana. *Ravin*, 537 P.2d at 502. However, because the right of privacy under the Alaska Constitution clearly shielded the ingestion of food, beverages and other substances, subject to overriding public health considerations, the court also concluded that its analysis would not be complete without a closer examination of the right to privacy and the "relevancy of where the right is exercised." *Id.* The court "recognized the distinctive nature of the home as a place where the individual's privacy receives special protection." *Ravin*, 537 P.2d at 503. It concluded:

> This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

Ravin, 537 P.2d at 504. The court reviewed the evidence presented at the omnibus hearing and concluded that the use of marijuana does not constitute a significant public health problem, with the exception of persons driving under the influence of cannabis. *Ravin*, 537 P.2d at 506, 509, 511. The court held that, given the evidence demonstrating the relative harmlessness of the drug, an individual's right of privacy in the home outweighed the government's interest in regulating the personal use of marijuana in the home. *Ravin*, 537 P.2d at 511.

In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), the court applied the *Ravin* standard to a claim that the prohibition against cocaine possession and use in the home violated the right to privacy. The court observed that the authorities agreed that cocaine is a more dangerous drug than marijuana. *Erickson*, 574 P.2d at 21–23. For example, cocaine, unlike marijuana, can cause death. *Id.* The court noted the special protection accorded to the home, stating that "[w]here the right to privacy is manifested in terms of interests more squarely within personal autonomy, the balance [of the individual's interest in privacy and the government's interest in health and safety] requires a heavier burden on the state to sustain the legislation in light of the right involved." *Erickson*, 574 P.2d at 22 n.144. In upholding the prohibition against the personal use and possession of cocaine in the home, the court found a "sufficiently close and substantial relationship" between the prohibition and the legislative purpose of protecting the general health and welfare. *Erickson*, 574 P.2d at 22.

[1] Our first step under *Ravin* is to evaluate the nature of the right abridged by the local option law. Harrison apparently concedes that the right to consume alcohol is not a fundamental or absolute right.[4] Moreover, the right to consume alcohol in the home is not directly at issue in this case. AS 04.11.496(b), the statute under which Harrison was convicted, merely prohibits a person from knowingly sending, transporting, or bringing alcoholic beverages into the community. It does not prohibit the use of alcoholic beverages in the home. Although we conclude that there is no fundamental right to possess or consume alcohol, *see Ravin*, 537 P.2d at 502, this conclusion does not end our analysis. Since there is a strong, if not direct, relationship between regulating importation of alcohol and regulating consumption of alcohol, and since the privacy amendment of the Alaska Constitution clearly "shields the ingestion of food, beverages or other substances," *Ravin*, 537 P.2d at 502, (quoting *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974)), we must more closely examine the right to privacy asserted in this case.

[2] Harrison characterizes the interest in drinking alcoholic beverages as "fundamental to personal lifestyle." We believe that the consumption of alcoholic beverages in the home, while not a fundamental right, touches on a privacy interest that is "more squarely within personal autonomy." *Erickson*, 574 P.2d at 22 n.144. Therefore, even when the state seeks to regulate consumption indirectly, through restrictions on importation, it bears a heavy burden of justifying the regulation as a legitimate health and welfare measure.

These considerations lead us to the second step in the *Ravin* analysis: whether the state has shown both that the local option law is justifiable as a health and welfare measure, and that the means chosen to regulate alcoholic beverages bears a sufficiently close and substantial relationship to the legislative purpose of protecting the public health and welfare.[5] *Ravin v. State*, 537 P.2d at 504. *See also State v. Erickson*, 574 P.2d at 22 (applying the *Ravin* standard to possession of cocaine). In making this determination, we must keep in mind the general proposition set forth in *Ravin:* "the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large as it relates to matters of public health or safety, or to provide for the general welfare." *Ravin*, 537 P.2d at 509.

[3] The evidence presented at the omnibus hearing unmistakably established a correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime. Harrison did not dispute this evidence. Given this evidence, we conclude that the state has met its burden of justifying the local option law as a health and welfare measure. Our conclusion is supported by the supreme court's express recognition of the deleterious effects of consuming alcoholic beverages. In *Ravin v. State*, 537 P.2d at 509–10, the court observed:

> It appears that effects of marijuana on the individual are not serious enough to justify a widespread concern, at least

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[4] We reject Harrison's claim that the local option law constitutes an impermissible racial classification. Any municipal government or established village may enact a prohibition against the sale or importation of alcoholic beverages. Once enacted, the prohibition applies to all persons in the municipality or village, regardless of race.

[5] Harrison vigorously asserts that the legislature's true purpose in enacting the local option law was to "invade the privacy of individual Alaska residents in their homes and prevent them from consuming alcoholic beverages." This claim is without merit. We think the legislature's purpose was to regulate the distribution and availability of substances that are harmful to the health and welfare of Alaskans. The legislature's purpose would be improper only if the consumption of alcoholic beverages was not substantially harmful. *See Erickson*, 574 P.2d at 16.

> compared with the far more dangerous effects of alcohol, barbiturates and amphetamines.

In *State v. Erickson*, 574 P.2d at 22, the court, after reviewing the record, noted that "cocaine is probably less dangerous than alcohol." Thus, the Alaska Supreme Court, in concluding that marijuana is a relatively harmless drug and that cocaine is a dangerous enough drug to warrant criminalization of its possession, has expressly found that alcohol is more dangerous than either drug.

We further believe that there is a sufficiently close and substantial relationship between the local option law and the legislative purpose of protecting the public health and welfare. Harrison contends that each community, regardless of size, location, and composition, has a large group of moderate users and small groups of abstainers and abusers. Harrison points to evidence suggesting that moderate consumption of alcoholic beverages may be medically beneficial. The prohibition of sale and importation enacted by St. Mary's, Harrison argues, improperly punishes all the moderate users of alcoholic beverages in order to address the problems created by the relatively small number of alcohol abusers. Noting that alcoholic beverages can be obtained in other areas, Harrison asserts that prohibiting the sale and importation of alcoholic beverages in St. Mary's is not substantially related to any legitimate state purpose. We disagree.

[4] While moderate use of alcoholic beverages may be beneficial, the evidence showing the harmful effects of consumption is undisputed. The legislature, after considering the severe social costs of alcohol abuse, concluded that all communities should have the option of controlling the level of local distribution and availability. Even though decreased restrictions on the availability of alcoholic beverages may, as Harrison argues, increase the proportion of moderate consumers to alcohol abusers, broadened access to alcoholic beverages will undoubtedly increase the absolute number of alcohol abusers. The threat posed to society by widespread alcohol abuse is enormous. We believe that enactment of Alaska's local option law bears a close and substantial relationship to the legitimate legislative goal of protecting the public health and welfare by curbing the level of alcohol abuse in our state.[6] *See State v. Erickson*, 574 P.2d at 22 and n.144. *Cf. Ravin v. State*, 537 P.2d at 511 (state demonstrated sufficient justification for prohibiting possession of marijuana while driving).

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6. We are, furthermore, not persuaded by Harrison's argument that Alaska's local option law violates privacy rights protected by the federal constitution. The federal cases have uniformly held that there is no federal right to consume alcoholic beverages. *See Dunagin v. City of Oxford*, Miss., 489 F.Supp. 763, 771–72 n. 11 (N.D.Miss.1980), *aff'd* 718 F.2d 738 (5th Cir. 1983), *cert. denied*, — U.S. —, 104 S.Ct. 3554, 82 L.Ed.2d 855 (1984); *Felix v. Milliken*, 463 F.Supp. 1360, 1371–72 (E.D.Mich.1978); *Republican College Council of Pennsylvania v. Winner*, 357 F.Supp. 739, 740 (E.D.Pa.1973). Examples of privacy rights protected by the federal constitution are the right to abortion, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the right to choose one's spouse, *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967), the right to receive information about birth control, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and the right to reproduce, *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). We believe that the consumption of alcoholic beverages does not rise to the same level as these rights.

LESSON PLAN 9

THE ALASKA OIL SPILL OF 1989: THE TRIAL OF JOSEPH HAZELWOOD

INTRODUCTION:

On March 24, 1989, the tanker Exxon Valdez struck Bligh Reef and spilled nearly 11 million gallons of oil into Prince William Sound. Initially, the blame was placed fully on the shoulders of the allegedly intoxicated captain of the tanker, Joseph Hazelwood. Responding to the accident, the State of Alaska charged Mr. Hazelwood with a wide variety of crimes. Among others, Mr. Hazelwood was charged with driving (or operating a watercraft) while intoxicated. A trial of the Hazelwood case gives students the opportunity to explore who is really responsible for the damage caused by the grounding of the Exxon Valdez and to learn about the crime of driving while intoxicated in Alaska.

One of the questions to be explored in this lesson will be whether it was Mr. Hazelwood, or many different people and groups, who caused the damage to Prince William Sound. As time has progressed, it has become clear that the damage caused by the grounding was shared by many people, including Third Mate Gregory Cousins (who was actually running the ship at the time), Alyeska Pipeline Service Company (who was responsible for preparations to respond to a spill), Exxon Corporation (who chose to use single hull tankers, rather than tankers equipped with a double hull), the State of Alaska (who had the ultimate responsibility to ensure that the oil spill contingency plan was workable), and ultimately all of the citizens of the state (who must balance maximization of oil revenues against protection of Alaska's pristine environment).

Alaska's crime of driving while intoxicated has two parts. One, a person must operate or drive a motor vehicle or a watercraft. "Operate or drive" includes actually driving the vehicle and also sitting in a disabled vehicle with the motor running. "A motor vehicle or a watercraft" includes cars, boats, snowmachines, and three wheelers. Two, the operation must occur either while a person is under the influence of intoxicating liquor or a controlled substance, or while the person tests .10 on a chemical or blood test taken within four hours after the alleged offense was committed. "Under the influence" means that a person's physical or mental abilities are impaired so that he no longer has the ability to operate a vehicle with the skill and caution which an ordinary person has when not under the influence. This means that it is not against the law to drive after drinking unless enough has been consumed to limit the person's physical or mental abilities. "Intoxicating liquor" includes wine, beer, Lysol, perfume, and vanilla extract. "Controlled substance" includes marijuana and cocaine. The only approved chemical test in Alaska is use of the Intoximeter 3000 breathalyzer machine. A blood test may be used if the person consents.

The minimum penalty for driving while intoxicated increases with each offense. The maximum remains the same as any Class A misdemeanor: one year in jail, a $5000 fine, or both. The minimum penalty for a first offense is 3 days in jail, a $250 fine, and a 90 day suspension of the person's driver's license. The minimum penalty for a second offense is 20 days in jail, a $500 fine, and a one year suspension of the person's driver's license. The minimum penalty for a third offense (and each one following) is 30 days in jail, a $1000 fine, and a ten year suspension of the person's driver's license.

Proving a driving while intoxicated case and potential defenses to that case may be divided into four groups. One, breath and blood tests require that the test be given in an appropriate manner with the approved equipment. Potential defenses include the failure to use the Intoximeter 3000 for a breath test, not testing within the four hour limit, or the machine not functioning properly. For example, in the Hazelwood case, the blood test was not given within 4 hours after the alleged offense was committed and the blood sample was not handled in the normal manner. Two, field sobriety tests may be given to show that the person is under the influence of alcohol. Students often have great fun trying to walk a straight line, balance on one foot, count backwards from 100, or perform any of the other tests used. Defenses include giving the tests long after the alleged offense occurred, not knowing whether the results are due to other physical or mental problems which the person may have (for example, damage to the inner ear may limit a person's ability to perform balance tests, even when not under the influence), and failure to give any tests at all, as occurred in the Hazelwood case. Three, evidence of prior drinking may be used to prove a case. This was the primary evidence against Mr. Hazelwood. The defense may show that the alcohol had no effect on the person, that the same amount of alcohol affects people differently, and that it is difficult to determine how much is enough to convict. Four, evidence may be produced that there was bad driving or an actual accident. The defense to this is that there may be a cause other than being under the influence for the bad driving or accident.

This lesson does not stand alone, but should be used as part of the class's regular unit covering the Alaska Oil Spill of 1989.

Note: This case could also be tried as a civil case with, for example, an environmental group charging all parties involved with the damage caused to the environment. An interesting issue in this case would be how to place a value on the damage caused. For example, how much is a dead bald eagle worth?

OBJECTIVES:

Students will be able to:

1. Identify five players who share responsibility for the damage caused by the grounding of the Exxon Valdez.

2. Identify and define the two parts of the crime of driving while intoxicated.

3. Identify four means of proving a driving while intoxicated case.

4. Identify four defenses to a driving while intoxicated case.

GRADE LEVEL: 9th to 12th grade

TIME TO COMPLETE: 8 hours (including the trial)

MATERIALS:

1. Notetaking guide for a driving while intoxicated case in Alaska.
2. Misdemeanor criminal complaint in the case of *State of Alaska v. Joseph Hazelwood.*
3. An edited copy of the Alaska driving while intoxicated law.
4. Jury summons forms for the *Hazelwood* trial.
5. Ten witness statements for the *Hazelwood* trial.
6. *Hazelwood* trial script.
7. Five jury instructions.
8. A verdict form.
9. (Not included) A videotape of the Mt. Edgecumbe High School *State v. Hazelwood* trial (available upon request).

PROCEDURE:

1. After exploring the Alaska Oil Spill of 1989 as a regular part of your class, summarize that unit by brainstorming the causes of (and the individuals or groups responsible for) the damage caused by the grounding of the Exxon Valdez in Prince William Sound. Included within these causes should be Hazelwood's possible intoxication and negligence in turning the ship over to Third Mate Cousins, the actions of Third Mate Cousins, the failure of the Exxon Valdez to have a double hull, the failure of Alyeska Pipeline Services to have an oil spill recovery plan that worked, the weather, the State's failure to ensure that a working oil spill recovery plan was in existence and ready to become operational immediately, and the citizens of the state who ultimately balance the need for oil revenues with the costs of protecting the environment.

2. Circle "Hazelwood's intoxication". Pose the question: Was Joseph Hazelwood intoxicated? Post the results of this straw poll - yes, no, beats me - in a prominent place in the room. Pass out an empty bottle of vodka and some empty beer bottles. Ask how we could find out if he was intoxicated or not. Either agree to the students' suggestion of a trial of Joseph Hazelwood, or suggest it yourself.

3. Invite a police officer or Village Public Safety Officer to teach students about the crime of driving while intoxicated in Alaska. Help prepare the police officer by sharing the notetaking guide with her. Pass out to students copies of the notetaking guide, as well as the misdemeanor complaint in the *Hazelwood* case and the edited version of the Alaska driving while intoxicated statute. Instruction at the local police station, with the many props available, may increase interest in this part of the lesson.

4. Assign student roles for the trial of Joseph Hazelwood and pass out copies of the witness statements. Give a copy of the trial script to the judge, court clerk, and the attorneys. Allow two class periods for the students to prepare for their roles. Work with each student individually to ensure that each is prepared for trial, and encourage them to find props for the trial to help make their testimony more authentic.

5. Invite other students in the school (thereby allowing for peer tutoring), or parents and members of the community (thereby allowing for community education) to serve as jurors. A public trial for the entire school or community may make this an exceptionally useful way to teach about the oil spill. Use the jury summons form to call them for service. If more than one jury is to be called to hear the case, use the jury summons form with the jury group number space. Jury instructions and verdict forms are included.

6. Debrief the trial. What was the verdict of the jury? Do you agree with the verdict? Why or why not? Was Joseph Hazelwood intoxicated? How do your answers now compare with your answers before the trial (which should still be posted in the room)? Return to the original question: who is responsible for the oil spill? Compare the student's original responses with their responses now. Why did they change their minds, if they did?

EVALUATION:

1. Assess student participation in class discussions and in the trial.

STATE OF ALASKA v. JOSEPH HAZELWOOD

Welcome Back!

I. Driving While Intoxicated (DWI)

A. Operates or drives a motor vehicle or a watercraft

B. While under the influence of intoxicating liquor or a controlled substance

or

.10 on a chemical or blood test taken within 4 hours after the alleged offense was committed

II. Penalties

	First	Second	Third
Jail			
Fine			
License suspended			

III. Proving a DWI case and possible defenses

Proof Defense

A.

B.

C

D.

IV. Proof in the Hazelwood case and possible defenses

In the District Court of the State of Alaska

THIRD **Judicial District,** VALDEZ **Alaska**

STATE OF ALASKA,

Plaintiff

VS.

JOSEPH HAZELWOOD,

Defendant

MISDEMEANOR

Criminal Complaint

No. 3VA-S89-345 CR.

Violation of Sec. A.S. 28.35.030(a)(1)

Sitka General Code DRIVING WHILE INTOXICATED

Complainant Ofc. H.W. Mar

personally appearing before me and being duly sworn, states that on or about the 24th day of March 19 89, at or near Valdez, in the Third Judicial District, State of Alaska, Joseph Hazelwood **did willfully and unlawfully operate a motor vehicle under the influence of intoxicating liquor, to-wit:** operated the Exxon Valdez between the Port of Valdez and on or near Bligh Reef, all of which is contrary to and in violation of A.S. 28.35.030(a)(1) and against the peace and dignity of the State of Alaska.

DR#89-05970
sgm

(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 25th day of March 1989

(SEAL)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(h) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983; am §§ 4, 5 ch 57 SLA 1989)

TRIAL COURTS FOR THE STATE OF ALASKA

AT MT. EDGECUMBE

SUMMONS FOR PETIT JUROR

IN THE NAME OF THE STATE OF ALASKA

TO: ALL MT. EDGECUMBE STUDENTS

YOU ARE HEREBY SUMMONED to serve as a juror in the trial courts for the State of Alaska, at Mt. Edgecumbe, Alaska, on Saturday, March 17, 1990.

DATE	JUDGE/MAGISTRATE/CLERK

TRIAL COURTS FOR THE STATE OF ALASKA

AT MT. EDGECUMBE

SUMMONS FOR PETIT JUROR

IN THE NAME OF THE STATE OF ALASKA

TO: ALL MT. EDGECUMBE STUDENTS

YOU ARE HEREBY SUMMONED to serve as a juror in the trial courts for the State of Alaska, at Mt. Edgecumbe, Alaska, on Saturday, March 17, 1990. You will be a member of Jury Group Number _______.

DATE	JUDGE/MAGISTRATE/CLERK

WILMA E. MURPHY

President of the Southwest Alaska Pilot's Association

Harbor pilot
- His job is to pilot tankers through the treacherous Valdez Narrows
- He was aboard the tanker both on her journey into Valdez and when she departed the evening of March 23

Longtime Hazelwood friend
- Clearly more at ease with the defense

Joined Hazelwood and two other crew members, Jerzy Glowacki and Joel Roberson, for lunch in Valdez
- Had pizza - he and Hazelwood drank iced tea
- After lunch, he dropped off the captain across from a bar called the Pipeline Club
- He saw Hazelwood next aboard the Exxon Valdez about 8 hours later
  - There was the smell of alcohol about him

Hazelwood arrived at the ship late

He smelled alcohol on the captain's breath
- Trace of liquor on his breath
- Prosecutor: "While on the bridge did you notice any signs that he had been drinking?"
- Murphy: "No, except I smelled something I associated with alcohol on his breath."

Hazelwood did not appear drunk

Hazelwood spent most of the 90-minute voyage from the Port of Valdez to Rocky Point in his cabin

Hazelwood still smelled of alcohol when Murphy got off the Valdez at about 11:20 pm
- However, he appeared sober and in control of the Exxon Valdez an hour before the accident
  - Prosecutor: "Did you observe any indications that the captain had been drinking then?"
  - Murphy: "The same observations as previously. The same smell."

He saw none of the usual signs of intoxication in the captain when Murphy left the ship and turned it over to Hazelwood
- Defense attorney: "Did you see anything that indicated the captain was impaired in any way?"
- Murphy: "Not at all."
- Defense: "Was his speech slurred?"
- Murphy: "No."

- Answered no to questions whether Hazelwood's movements changed, whether his eyes were watery and whether he had a mood change from that afternoon when the men had a non-alcoholic lunch together
  - Murphy: "He seemed the same to me."

Murphy observed Hazelwood giving orders to the crew which seemed clear
- Defense: "Did he seem in command of his vessel?"
- Murphy: "Oh, absolutely."

Murphy was asked whether he ever contemplated overruling Hazelwood's power and taking control of the ship because of the captain's alleged intoxication
- Murphy: "It never entered my mind. It was a routine transit."
  - Murphy prepared to say that even the best mariners occasionally run aground
- Judge would not allow him to say this - not probative and would open up irrelevant issues

JERZY GLOWACKI

Chief engineer on the Exxon Valdez

Hazelwood invited Glowacki and Radio Officer Joel Roberson to go ashore with him on the morning of March 23

- They left the Exxon Valdez at about 11am
- They stopped off at the office of a shipping agent to make some telephone calls
- They had lunch together at the Pizza Palace with harbor pilot Ed Murphy
  - Hazelwood drank iced tea at the restaurant
- Murphy dropped them near a Valdez supermarket
  - There the three of them split up
    - They agreed to rendezvous later at the Pipeline Club, a bar and restaurant near the waterfront

Glowacki was the first to arrive at the Pipeline Club at approximately 4 p.m. He ordered a gin and tonic. A half hour later Hazelwood arrived and ordered vodka. "I believe it was straight," Glowacki said A few minutes later Roberson arrived and order a beer. Glowacki believed that he had three drinks. "Perhaps three - I really didn't count."

Prosecutor: "Could it have been more than that?
Glowacki: "I really don't think so!"

While at the Pipeline Club, the three sat at a table, drinking and talking shop

The three left the Pipeline Club around 7:00 p.m. and walked to the Pizza Palace, where they ordered a pizza to take back to the ship. While waiting, they went into a bar next door and ordered at least one more drink (beer).

Glowacki said that he drank a total of two beers and about three and one-half gin and tonics. He was uncertain how many drinks Hazelwood had.

They were late for check-in at the ship

Glowacki didn't see Hazelwood drink again after the Pizza Palace

- Exxon had a ban on keeping liquor aboard the ship

- Glowacki saw no indication that the alcohol consumed by Hazelwood affected him in any way
    - He saw no signs of intoxication when the captain boarded the ship that evening
        - Glowacki: "I would describe him as serious, calm'
        - Defense attorney: "Did you see anything that indicated the captain was impaired in any way?"
        - Glowacki: "Not at all."
    - He was sober and calm
    - No sign of changed movements, slurred speech, watery eyes, or a mod change
    - Hazelwood steady on his feet
    - He didn't see Hazelwood drink again on the ship

- This testimony is both consistent with and in conflict with the testimony of Janice Delozier
    - Both Glowacki and Janice Delozier saw Hazelwood drinking at the Pipeline Club
    - Janice Delozier, however, places Hazelwood at the Pipeline Club 2 hours earlier than Glowacki said the captain arrived

JANICE DELOZIER

Dental assistant

Wife of Coast Guard investigator Mark Delozier

Regularly stops at the Pipeline Club during her lunch hour for coffee and conversation
Arrived at club on March 23 at about 1:30 pm
About 15 minutes after she arrived, a man she later learned was Hazelwood entered, approached the bar, and ordered a vodka and rocks
She is sure he was drinking vodka because he ordered a particular brand, Smirnoff, and the bartender made a mistake on the first drink
He took the vodka to a table in the corner
He later was joined by another man who offered to buy Hazelwood a drink
He had a second drink before she left at about 2:45 pm
"I know he got a second because the bartender said, 'We're going to get it right this time.'"
Saw Hazelwood have at least two drinks in the Pipeline Club early on the afternoon of March 23

She didn't know Hazelwood on March 23 and she didn't realize the significance of what she had observed in the Pipeline Club until the following week, when she saw the captain's photograph with a newspaper story about the grounding
"My immediate reaction was, "Wow, I saw him.'"

Questioning by the defense
Discussed the Hazelwood sighting with her husband, who was then investigating Hazelwood and the events that led up to the grounding of the Exxon Valdez
Suggested that her account was an effort to further the career of her husband
Husband left it to her to decide if she wanted to come forward with her information
He sat in on her interrogation with other investigators and coached her on such details as how far apart she and Hazelwood would have been in the bar
This interview was recorded

She reviewed the recorded interview one week before testifying to ensure that her testimony was consistent

She hesitated to come forward because "people would think it was fishy."

Defense: "Why did you think people would think it was fishy?"

Delozier: "Human nature. You know, two Deloziers. My husband got a lot of publicity."

Defense: "Were you jealous?"

Delozier: "No."

Defense: "Did you want to get publicity?"

Delozier: "I didn't want anything to do with it. And then there were the ever-present questions - what were you doing in a bar? I doubted people would believe that I had gone there for coffee."

She placed her husband at the Pipeline Club late on the night of March 23, a few hours before he was called out to start the investigation of the tanker grounding

He came to the bar that evening to keep score for her darts league team, and the couple left sometime after 10 pm

While Delozier said she was "absolutely positive"Hazelwood was the man she saw ordering vodka in the Pipeline Club on the afternoon of March 23, she was unable to tell defense attorneys if her husband had a drink later the same evening

This testimony is both consistent with and in conflict with the testimony of Jerzy Glowacki

Both Glowacki and Janice Delozier saw Hazelwood drinking at the Pipeline Club

Janice Delozier, however, places Hazelwood at the Pipeline Club 2 hours earlier than Glowacki said the captain arrived

MARK DELOZIER

(This is a combination of the testimony of Coast Guard Investigator Mark Delozier and Alaska State Trooper Michael Fox.)

Coast Guard Investigator

Delozier drinking in the Pipeline Club in Valdez a few hours before the accident - had two Miller Lite beers between 8 p.m. and 10 p.m. on March 23 - the tanker hit Bligh Reef shortly after midnight - DeLozier was aroused from bed about 12:30 a.m. on March 24 to investigate the accident

He was dispatched to the grounded ship by the U.S. Coast Guard in the early morning hours of March 24

> They said the captain was drunk and they wanted me to take care of it - when he met the skipper, Hazelwood didn't seem intoxicated

When he boarded the ship hours after the grounding he was expecting to stop a drunken brawl but was surprised to find a dark, quiet ship where "everyone was gazing out the windows."

He said Hazelwood was napping when he arrived about 4 hours after the tanker hit the reef, but they met about an hour later

> "That was the first time I'd seen him. I said, 'Well, what the heck is the problem?' and he said, 'You're looking at it.'"

Boarded the grounded tanker and confronted Hazelwood, who smelled of liquor - the smell was "very intense and very obvious." - smelled it on his breath

> Defense attorney: When you smelled alcohol on Captain Hazelwood's breath, are you sure you weren't smelling your own breath?
>
> Delozier: One hundred percent sure.

Boarded the Exxon Valdez with Alaska State Trooper Michael Fox, who describes Hazelwood's appearance as follows:

> Fox: He had bloodshot eyes and was smoking cigarettes. I didn't notice any alcohol. He had morning breath, bad breath.... He seemed unimpaired.

Hazelwood did not stagger, slur his words or appear impaired by alcohol

Didn't tell Hazelwood he was suspected of being intoxicated
    Reason: he didn't want to alarm the captain

Delozier interviewed Hazelwood the morning after the ship ran aground
    Hazelwood denied drinking heavily
    Said he had a "phony beer" on the the ship and a real beer before he sailed
    Delozier: I asked him if he had been consuming alcohol
    Hazelwood: Well, I had one of these phony beers "Moussey" and I'd been ashore. I had lunch with Captain Murphy, drank iced tea.
    Delozier: Did you have anything to drink before going back to the ship?
    Hazelwood: I stopped to pick up pizza for other crew members. I had a beer with a piece of pizza, picked up before we came back.
    Delozier: A real beer?
    Hazelwood: A real beer; nothing with lunch, just iced tea.

Hazelwood said he had one of the low-alcohol beers before sailing
    Delozier: Did you stop at any bars in Valdez during your time ashore?
    Hazelwood: We went by the Pipeline to see if anybody off the ship was in there, if we knew anybody.
    Delozier: You didn't have anything to drink in there?
    Hazelwood: No.

Found two empty cans of a low-alcohol drink known as Moussey Beer in the captain's quarters
    When he went to the captain's quarters to question Hazelwood, the refrigerator was stocked with Moussey beer.
    Didn't find any hard liquor in the captain's quarters

Found more than 100 empty bottles of low alcohol beer on the Exxon Valdez when he returned to search the tanker about a week after it ran aground
    The beer contains 0.5% alcohol

Low alcohol beer allowed aboard ships by Exxon - Exxon forbade other alcohol

MICHAEL PEAT

(This is a combination of the testimony of Coast Guard medical technician Scott Conner and Forensic toxicologist Michael Peat.)

Forensic toxicologist
Chief forensic toxicologist for the state of Oklahoma

Went to tanker and took blood and urine samples from Hazelwood and other crew members the morning after the crash

When he got back to Valdez, the refrigerator used to store such samples was locked, and the only key was with another Coast Guardsman who was at the scene of the crash. So he checked into a room at a Valdez motel and put the crucial samples on a window sill to keep them cool. A little later he took them back to the Coast Guard station and found the samples refrigerator still locked. So he took the blood and urine into the kitchen - or galley - and found a cool place to store it overnight. "I put the samples in the galley reefer right alongside the carrots and the lettuce. The next day, he retrieved the samples from the vegetable shelf, flew back to Anchorage with the samples, took them home, and put them in his own refrigerator until he could get them into an official samples refrigerator at the Coast Guard offices in Anchorage.

Tested blood samples taken from Hazelwood about 10 hours after the crash showed an alcohol level of 0.061 percent

He then used a formula for the rate alcohol is eliminated from the body to calculate what Hazelwood's blood alcohol would have been at 12:05 a.m., the time the state says the Exxon Valdez slammed into Bligh Reef

He said his studies show that alcohol is eliminated from the body at an average rate of .018 percent per hour

The low end of the elimination rate is .01 percent per hour and the high end of the range is .03 percent per hour

For his calculations, he used an elimination rate of .008 percent - a figure 20 percent more conservative than the low end of the elimination range

Using that conservative rate, he calculated Hazelwood would have had a blood alcohol content of .14 at 12:05 a.m.

If the average elimination rate of .018 percent per hour is used, the calculation shows Hazelwood would have had a blood alcohol content of .25

Using the high elimination rate, the captain's midnight blood alcohol content would have been .37 percent

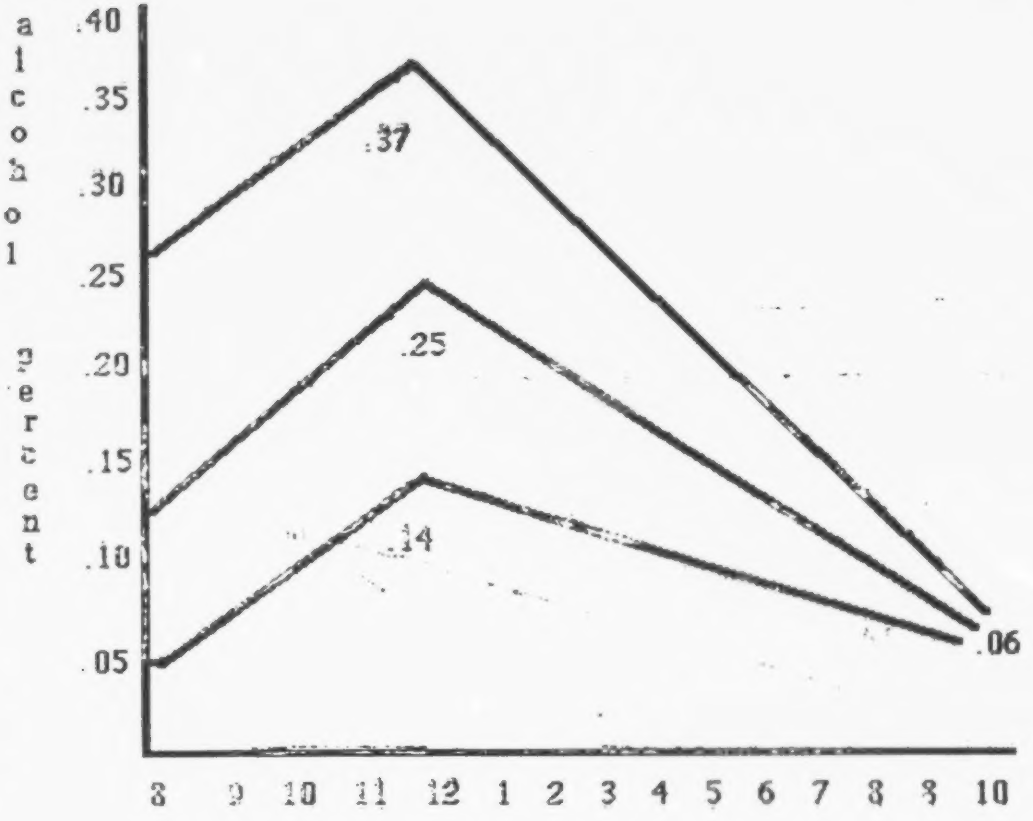
His assumptions were that Hazelwood was 6 feet tall and weighed 180 pounds, and that he stopped drinking at 8 p.m., the approximate time he returned to the ship

Defense attorneys raised the possibility that Hazelwood may have had something to drink after the grounding

He told Mark Delozier that he had one to two low-alcohol beers after the accident

This would upset the estimates

HAZELWOOD'S BLOOD ALCOHOL LEVEL
MARCH 23 - 24, 1989



from 3 pm. to 10 am.

Patricia Caples: Shipping Agent

Direct Examination

She saw Hazelwood moments before the Exxon-Valdez set sail and witnessed Hazelwood's attitude to be jolly and she suspected him to be drinking because of it.

Cross Examination

His attitude appeared unchanged from his usual and was very "businesslike."

Gretchen Dunkin: Administrative Assistant at the Alaska
Maritime Agency

Direct Examination

She saw Hazelwood leave at 12:30pm for lunch with other shipmates and saw him at the Pipeline Club at 4pm.

Cross Examination

Hazelwood's attitude and actions were unchanged from earlier in the day.

"He seemed to be relaxed."

EMILY KAISER

Valdez flower shop owner

Took Hazelwood's order for Easter flowers to be sent to his wife at his home in Huntington, N.Y.

Order taken on March 23 between 2 and 3 p.m.

This was about six hours before the skipper boarded the Exxon Valdez

> The prosecution says Hazelwood was drinking in a bar across the street beginning shortly after 1 p.m.

"He was sober", said Ms. Kaiser

She remembered him because she also is from Huntington and they chatted about their hometown

JAMES KUNKEL

Chief mate of the Exxon Valdez

A merchant seaman for 21 years - an officer with Exxon for 17 years

Graduate of the prestigious Kings Point Merchant Marine Academy

Was asleep at the time of the accident

had been up much of the 24 hours before the tanker left Valdez supervising the loading of crude oil

Awakened by Third Mate Cousins after the grounding and then proceeded to the bridge

The captain seemed sober and in command after the accident - did not smell alcohol on his breath

Hazelwood calm in the wake of the accident - he had a calming influence on the crew

"What was the captain's demeanor?" - "Very sullen, but all business - cool, calm, in charge."

Hazelwood made prudent decisions in the wake of the grounding

Discussed the possibility of abandoning ship with hazelwood, but Hazelwood chose not to sound a general alarm, fearing panic among the crew

Lifeboats lowered as a precaution

Good decision in retrospect - Prince William Sound very dangerous at night near rocks

GREGORY COUSINS

Third mate on the Exxon Valdez

Hazelwood was in control of the tanker until it was turned over to Cousins

In control of the tanker when the accident occurred
- Joseph Hazelwood placed him in command after ordering a course change
- Hazelwood asked Cousins if he felt comfortable with what we're going to do and Cousins said yes - Hazelwood asked Cousins, "Do you feel comfortable enough that I can go below and get rid of some paperwork?"
- Cousins said he felt comfortable
- He had many conversations with Hazelwood about the course the Exxon Valdez would follow into Prince William Sound

Cousins did not have the special license required to pilot the tanker in that area
- Cousins was otherwise fully qualified to pilot the tanker

After grounding, Hazelwood remained calm, gave proper commands, and even managed a touch of dark humor

Hazelwood's first order to him Cousins after the grounding was to get a fix on the ship's location
- Defense attorney: Did that seem a prudent command?
- Cousins: Yes, we needed to know where we were on the reef

Hazelwood was able to give clear, concise commands
- Defense attorney: Did he appear to be somewhat in shock?
- Cousins: We all were.
- Attorney: And he still appeared to give clear, concise commands?
- Cousins: Yes

The captain seemed sober and in command after the accident - Cousins did not smell alcohol on his breath

HAZELWOOD SCRIPT

CLERK: All rise. The District Court for the State of Alaska, First Judicial District at Mt. Edgecumbe, Alaska, is now in session, Judge Jeremy N. Philemonoff presiding.

JUDGE: (Judge walks in with file and gazes around the courtroom to ensure that all is in order. As he sits, he says to all in the courtroom:)

Please be seated.

On record.

(Clerk turns on the tape recorder and begins to take notes.)

Today we begin the trial in the case of State of Alaska versus Joseph Hazelwood, 1ME-S89-001 CR.

Are the attorneys for the State of Alaska ready to proceed?

(Attorneys for the State of Alaska rise.)

ATTORNEYS FOR STATE: Yes, your honor.

(Attorneys for the State of Alaska sit.)

JUDGE: Are the attorneys for Joseph Hazelwood ready to proceed?

(Attorneys for the defense rise.)

DEFENSE ATTORNEYS: Yes, your honor.

(Attorneys for the defense sit.)

JUDGE: Before we begin the trial, I want to thank the jurors for attending today's trial. Before you are given the juror's oath, I want to remind you of the importance of being a member of a jury. Trial by jury is an extremely important right which all Alaskans enjoy. The juror's oath, which will now be given to you, requires you to make a fair decision based upon the evidence which you hear in this courtroom and the law which I explain to you.

Madam Clerk, will you please administer the juror's oath?

CLERK: Will all jurors please rise and raise your right hand?

Do each of you solemnly swear (or affirm) that you will make your decision in the case now before the court solely on the evidence given in court and the law which the judge will explain to you, so help you God.

JUDGE: You may be seated.

You are about to hear the evidence in this case. You must decide what happened on March 23, 1989, by considering only the information which you receive in this courtroom. You must put out of your mind any feelings of anger or prejudice you may have. You must ignore public opinion and public feeling. The decisions which you make here must be based upon a fair evaluation of the evidence.

As you listen to the witnesses talk, you must decide who to believe and how much what they say is worth. Think about the following as you listen to each witness:

1. The witnesses' attitude, behavior, and appearance as they talk here in court;
2. How well they remember what happened; and,
3. Any reason they may have for not telling the truth.

It is up to you, as jurors, to decide whether to believe all, part, or none of what each witness says here.

Mr. Chocknok, are you prepared to give the opening statement for the State of Alaska.

Mr. Chocknok: Thank you, your honor.

(Opening statement given.)

JUDGE: ____________________, are you prepared to give the opening statement for Mr. Hazelwood?

Mr. _______: Thank you, your honor.

(Opening statement given.)

JUDGE: You may call your first witness, Ms. Chamberlain.

Ms. Chamberlain: The State calls William E. Murphy.

(Mr. Murphy walks to the front.)

JUDGE: Please approach the clerk and be sworn.

CLERK: Please raise your right hand. Do you solemnly swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God.

(Witness responds: "I do.")

Please be seated and state your name for the court and spell your last name.

What is your address?

What is your occupation?

JUDGE: Ms. Chamberlain, you may proceed.

(Attorney questions witness.)

Any cross examination, Ms. Guthridge?

(Attorney cross examines witness.)

Any redirect, Ms. Chamberlain?

(If any, attorney asks further questions.)

You may be excused, Mr. Murphy.

[OBJECTIONS: If one of the attorneys objects to a question by the other attorney, she will say, "Objection" and then should give her reason (if she doesn't, ask her why she objects). Then turn to the other attorney and say, "Any response?" Then make your ruling: sustained (you agree with the attorney making the objection) or denied (you don't agree with the attorney making the objection.]

Your next witness, Ms. Chamberlain.

ATTORNEY FOR STATE: The state rests its case, your honor.

JUDGE: You may call your first witness, Ms. Guthridge.

Ms. Guthridge: Captain Hazelwood calls Jerry Dunkin.

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Ms. Guthridge: The defense rests, your honor.

JUDGE: The evidence has now been presented to you. I will now explain to you the law in this case. A person is under the influence of intoxicating liquor if his physical or mental abilities are limited in any way. In order for the state to show that Joseph Hazelwood is guilty of operating a watercraft while intoxicated, it must prove each of the following four items beyond a reasonable doubt:

1. That on or about March 24, 1989,
2. At or near Bligh Reef, Alaska,
3. The defendant, Joseph Hazelwood, operated a watercraft,
4. While at the time being under the influence of intoxicating liquor.

If the state has proved each of these four items beyond a reasonable doubt, then you shall find Joseph Hazelwood guilty. If the state has failed to prove any of these four items beyond a reasonable doubt, then you shall find him not guilty.

In all criminal trials, a defendant is presumed innocent. This means that when he comes into the courtroom, you must believe that he is innocent since no evidence has been presented against him. The state has the job of showing that a person is guilty. It must prove guilt beyond a reasonable doubt.

Joseph Hazelwood has not testified in this case. Since he has the right not to testify, you may not consider his silence in reaching your decision.

JUDGE: Ms. Chamberlain, are you ready to give your closing argument to the jury?

Ms. Chamberlain: Thank you, your honor. The State would like to reserve 3 minutes of its closing time for rebuttal.

JUDGE: That will be fine, Ms. Chamberlain. You may proceed.

(Ms. Chamberlain gives her closing argument.)

JUDGE: Ms. Guthridge, are you prepared to give your closing argument?

Ms. Guthridge: Thank you, your honor.

(Ms. Guthridge gives her closing argument.)

JUDGE: Ms. Chamberlain, your rebuttal argument.

Ms. Chamberlain: Thank you, your honor.

(Ms. Chamberlain gives her rebuttal argument.)

JUDGE: You were chosen as jurors in this case because you promised to decide this case based upon the evidence which you have heard here today and the law which I have explained to you. Both the state and the defendant expect that you will live up to these promises.

In coming to a decision in this case, your job as jurors is to talk with each other. It rarely helps discussions to state your opinion strongly at the beginning. Instead, talk with each other and try to reach agreement. Each of you must decide the case for yourselves, but only after discussing it fully with each other.

After retiring to decide this case, you will choose one of your members to act as jury foreperson. When you have reached a decision, your jury foreperson will fill in and sign the verdict form.

While you are deciding this case, the baififfs will keep you together. If you have any questions, you may send a written note to me by giving it to the bailiff. I will answer your note in writing.

Once you have reached a decision and given the verdict form to one of the bailiffs, you may leave the courtroom until I call you to return.

JUDGE: You may now begin your deliberations.

(All juries deliberate. Juries may be temporarily excused after reaching a verdict. When all juries have reached a verdict, the court will be reconvened in order for the verdicts to be read by the judge.)

INSTRUCTION NO. 1

Before we begin the trial, I want to thank the jurors for attending today's trial. Before you are given the juror's oath, I want to remind you of the importance of being a member of a jury. Trial by jury is an extremely important right which all Alaskans enjoy. The juror's oath, which will now be given to you, requires you to make a fair decision based upon the evidence which you hear in this courtroom and the law which I will explain to you.

PLEASE RISE.

Do each of you solemnly swear (or affirm) that you will make your decision in the case now before the court solely on the evidence given in the court and the law which the judge will explain to you, so help you God?

YOU MAY BE SEATED.

INSTRUCTION NO. 2

You are about to hear the evidence in this case. You must decide what happened on March 23, 1989, by considering only the information which you receive in this courtroom. You must put out of your mind any feelings of anger or prejudice you may have. You must ignore public opinion and public feeling. The decisions which you make here must be based upon a fair evaluation of the evidence.

As you listen to the witnesses talk, you must decide who to believe and how much what they say is worth. Think about the following as you listen to each witness:

1. The witnesses' attitude, behavior, and appearance as they talk here in court;
2. How well they remember what happened; and,
3. Any reason they may have for not telling the truth.

It is up to you, as jurors, to decide whether to believe all, part, or none of what each witness says here.

INSTRUCTION NO. 3

The evidence has now been presented to you. I will now explain to you the law in this case. A person is under the influence of intoxicating liquor if his physical or mental abilities are limited in any way. In order for the state to show that Joseph Hazelwood is guilty of operating a watercraft while intoxicated, it must prove each of the following four items beyond a reasonable doubt:

1. That on or about March 24, 1989,
2. At or near Bligh Reef, Alaska,
3. The defendant, Joseph Hazelwood, operated a watercraft,
4. While at the time being under the influence of intoxicating liquor.

If the state has proved each of these four items beyond a reasonable doubt, then you shall find him guilty. If the state has failed to prove any of these four items beyond a reasonable doubt, then you shall find him not guilty.

INSTRUCTION NO. 4

In all criminal trials, a defendant is presumed innocent. This means that when he comes into the courtroom, you must believe that he is innocent since no evidence has been presented against him. The state has the job of showing that a person is guilty. It must prove guilt beyond a reasonable doubt.

Joseph Hazelwood has not testified in this case. Since he has the right not to testify, you may not consider his silence in reaching your decision.

INSTRUCTION NO. 5

You were chosen as jurors in this case because you promised to decide this case based upon the evidence which you have heard here today and the law which I have explained to you. Both the state and the defendant expect that you will live up to these promises.

In coming to a decision in this case, your job as jurors is to talk with each other. It rarely helps discussions to state your opinion strongly at the beginning. Instead, talk with each other and try to reach agreement. Each of you must decide the case for yourself, but only after discussing it fully with each other.

After retiring to decide this case, you will choose one of your members to act as jury foreperson. When you have reached a decision, your jury foreperson will fill in and sign the verdict form.

While you are deciding this case, the bailiffs will keep you together. If you have any questions, you may send a written note to me by giving it to the bailiff. I will answer your note in writing.

REMEMBER, ALL JURY MEMBERS MUST AGREE ON THE DECISION MADE BY THE JURY. Once you have reached a unanimous decision and given the verdict form to the bailiff, you may leave the courtroom until I call you to return.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT MT. EDGECUMBE

STATE OF ALASKA,

Plaintiff,

vs.

JOSEPH HAZELWOOD,

Defendant.

_________________________/

Case No. 1ME-S89-001 Cr.

VERDICT

We, the jury, find the defendant, JOSEPH HAZELWOOD,

______________________	______________________	of
GUILTY	NOT GUILTY	

Operating a Watercraft While Intoxicated.

DATED at Mt. Edgecumbe, Alaska, this ________ day of March, 1990.

____

Foreperson

LESSON PLAN 10

COMPARATIVE LAW: THE PACIFIC RIM

INTRODUCTION:

More than eighty-seven years ago John Hay, the United States Secretary of State, stated:

> The Mediterranean is the ocean of the past, the Atlantic is the ocean of the present and the Pacific is the ocean of the future.

Especially for Alaskans, this message is coming true in our lifetime. The study of law as it is applied in other countries on the Pacific Rim may give us an insight into how the societies of those countries are organized.

One way of delving into comparative law is to focus on a single case as the beginning point for understanding the legal systems of other countries or cultures. For example, how would the United States, China, Korea, Japan, and traditional native groups in Alaska handle a severely intoxicated person who had seriously damaged the fishing boat of another person?

If this happened in the United States today, the person would probably be indicted and tried by a jury. The focus of the trial process is protecting the individual rights of the defendant, not the damage caused to the other person's livelihood or how these people would interact in the future.

In China, on the other hand, individual rights are subordinate to the community well-being. The law exists to serve the people. When a dispute arises, friends, neighbors, and co-workers form a mediating committee. The committee attempts to investigate the cause of the dispute, educate the parties involved in socialist principles, and resolve the dispute so that the interests of both the parties and the community are promoted.

In Korea, the focus is again on mediation. However, the locale for mediation is the courtroom, where the judge, with the assistance of lawyers, seeks to discover the facts and find an acceptable compromise. The judge begins from a belief that people want as little conflict as possible and will welcome a compromise.

In Japan, the traditional value of harmony leads to belief that having to go to court is an admission of failure and something to be avoided. Again, mediation is the focus of their problem-solving system. It is believed that disputes should be settled by mutual agreement and consensus. Mediation takes place first between those involved (perhaps at the neighborhood police station) and, if that is not successful, through the assistance of a prominent person, such as a parliament member's secretary or a ward official.

Traditional native groups each had their own way of handling such disputes. Part of the process of comparative law is to discover that traditional method, either through research or interviews with village elders. In some communities, Traditional Councils may actually be using traditional methods for resolving disputes among community members.

In studying comparative law, one must try to avoid all encompassing judgments. Everything which we do in our system is not perfect; it has some advantages and some disadvantages. This statement is also true of other systems. What is important is to discover the different principles of justice used by each system and how each handles the problems of injustice which all systems face.

OBJECTIVES:

Students will be able to:

1. Identify a problem common to two different societies.

2. Identify the procedure used in two different societies for resolving the legal problem.

3. Identify one way in which the two problem-solving systems are similar and one way in which the two systems are different.

4. Identify one advantage and one disadvantage for each problem-solving system.

GRADE LEVEL: 7th to 12th grade

TIME TO COMPLETE: 5 hours over a two month period

MATERIALS:

None.

PROCEDURE:

1. Use brainstorming to find problems which may occur in each system to be studied. Examples include common societal problems (ie, damage caused by intoxicated persons) and school rules (the punishment given two students who are found fighting).

2. Divide students into groups of three to choose the problem which they wish to investigate, and the legal systems which they wish to compare (one should be the United States).

3. Assist the students in contacting resource persons. Any number of procedures may be used, including mail, telephone, personal interviews, a computer mail system, or audio-conferencing. One possible way of investigating a problem is to have the students contact a local attorney and find out the options for solving the problem in the United States. The students may then contact students in another country (and/or in rural Alaska), inform them of how the problem is handled here, and ask them how people in their country would deal with it. The information from the other country may be used as the basis for an audio-conference with the local attorney to obtain her views on how the two systems compare.

4. Each group will make a presentation to the class. This presentation may include use of their local attorney as a resource person.

EVALUATION:

1. Assess student participation in the group activity and in class discussions.

2. Students must fulfill the requirement of making a group presentation.